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ELECTION COMMISSION, INDIA

NOTIFICATION

*New Delhi, the 3rd July 1953*

**S.R.O. 1387.**—Whereas the election of Shri Ratan Amol Singh and Shri Ram Parkash, as members of the Legislative Assembly of the State of Punjab, from the Molana constituency of that Assembly, have been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Maharaj Singh, son of Ch. Atma Ram, Pleader, Ambala City;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, LUDHIANA

Harbans Singh, Barrister-at-Law, *Chairman.*

Hans Raj Khanna, B.A., LL.B., *Judicial-Member.*

Parma Nand Sachdeva, B.A., LL.B., Advocate, *Member.*

ELECTION PETITION No. 302 OF 1952

Shri Maharaj Singh, S/o Ch. Atma Ram, Pleader, Ambala City—*Petitioner.*

*Versus*

1. Shri Ratan Amol Singh, V. & P. O Buria, District Ambala.
2. Shri Ram Parkash, V. & P. O Adhoya, District Ambala.
3. Shri Ratan Singh, Ex-M.L.A., V. & P. O. Bihta, District Ambala.
4. Shri Raghbir Singh, s/o Ch. Bharat Singh, V. & P. O. Bihta, District Ambala.
5. Shri Bhola (Harijan), V. & P. O. Bihta, District Ambala.
6. Shri Dharampal (Harijan), V. & P. O. Bihta, District Ambala.
7. Shri Fateh Singh, s/o Shri Tuman Singh, V. & P. O. Bihta, District Ambala.
8. Shri Kuldip Singh, s/o Shri Kishan Singh, Kuldip Nagar, Ambala Cantt.
9. Shri Jai Gopal, Village Dhurala, P. O. Kesri, District Ambala.
10. Shri Bihari Lal Batra, House No. 338, Ward No. 3, Lalkurti Bazar, Ambala Cantt.

11. Shri Nauharlya Ram, V. & P. O. Kesri, District Ambala.
12. Shri Shamsher Singh, V. & P.O. Mullana, District Ambala.
13. Shri Balwant Singh, V. Milak Sukhi, P.O. Mustababad, District Ambala.
14. Shri Dasonda Singh, Timber Merchant, Abdullapure, P.O. Abdullapure.
15. Shri Atma Ram (Harijan), Ex-Jamadar, Municipal Committee, Majri, Ambala City.
16. Shri Nand Kishore, Harijan, V. & P. O. Mullana, District Ambala.
17. Shri Shankar Lal (Harijan), V. Milak Khas, P.O. Bilaspore, District Ambala.
18. Shri Ram Singh Ajib, (Harijan), V. Nagal, P. O. Ambala City.
19. Shri Nand Kishore (Harijan), V. & P. O. Jagadhri, District Ambala.
20. Shri Ganda Ram (Harijan), V & P. O. House No. 8432, Ward No. 5, Ambala City.
21. Shri Telu (Harijan), V. Hasanpure, Tehsil Naraingarh, P.O. Sadhaura—  
*Respondents.*

Ch. Bakhtawar Singh, Advocate, and Shri Rajinder Nath, Pleader, for Shri Maharaj Singh, petitioner.

M/S C. K. Daphtry, H. S. Doabia and Lakshmi Chand, Advocates, for Shri Ratan Amol Singh, respondent No. 1.

M/S H. S. Doabia and Jawahar Lal Kapur, Advocates, for Shri Ram Parkash, Respondent.

Shri S. M. Sikri, Advocate-General, Punjab State assisted by Shri Balak Singh Bagga, Local Government Pleader, appeared for the State on 28th March 1953.

#### ORDER

(PER HANS RAJ KHANNA, *Judicial-Member*)

Shri Ratan Amol Singh, respondent No. 1, and Shri Ram Parkash, respondent No. 2, were declared elected as members of the Punjab Legislative Assembly from the Mollana Constituency, District Ambala during the last general elections. Shri Maharaj Singh, who was one of the candidates from this Constituency, thereupon filed the present election petition with a view to question the election. It was stated in the election petition that Shri Ratan Amol Singh was a Lambardar in seven villages in the Constituency and as such he held an office of profit under the Punjab Government. It was alleged that the improper acceptance of the nomination paper of Shri Ratan Amol Singh had materially affected the result of the election. It was also stated that respondent No. 1 had obtained the assistance of Lambardars and Sarpanches inasmuch as he had appointed them polling agents during the election.

The respondent No. 1, Shri Ratan Amol Singh, in his written statement, admitted that he was a Lambardar in the seven villages mentioned by the petitioner. Shri Ratan Amol Singh, however, stated that his status as a Lambardar was not like that of other ordinary Lambardars who got remuneration from the Government out of land revenue. According to Shri Ratan Amol Singh he was a descendant of an independent ruler of the Cis-Sutlej State of Buria who was transformed into a Jagirdar. It is stated that the Jagir was not a gift of the British Government. Shri Ratan Amol Singh added that he was not getting anything as a remuneration for being a Lambardar. In the alternative it was stated by Shri Ratan Amol Singh that even if he was taken to be Lambardar in the ordinary sense, the office of Lambardar was not a disqualification for being chosen as member of the Punjab State Legislature by reason of the Punjab State (Prevention of Disqualification) Act, 1952 and by virtue of the Punjab Legislative Assembly (Removal of Disqualifications) Act, 1937. Shri Ratan Amol Singh further stated that the fact that some Lambardars and Sarpanches acted as polling agents of a candidate, would not show that they rendered any assistance for the furtherance of the prospects of the election of the candidate. A plea was also taken that the petition was not within time.

Shri Ram Parkash, in his written statement, supported the written statement of respondent No. 1.

The election petition, as originally framed, stated the relief sought in the heading but there was no separate clause at the end of the petition setting out the relief claimed. The petitioner put in an application for insertion of the prayer

clause at the conclusion. As per order dated the 20th of September, 1952, the Tribunal permitted the petitioner to insert the relief clause at the end of the petition. Shri Ram Parkash, respondent No. 2, and the counsel for respondent No. 1, made a statement on 20th September 1952 in which the objection, with regard to the petition being barred by limitation, was given up. We, thereupon, framed the following issues:

1. Was the acceptance of nomination paper of Shri Ratan Amol Singh, respondent No. 1, improper and illegal on account of his holding the office of a Lambardar as alleged in the petition and as such disqualified under sub-clause (1) of clause (a) of Article 191 of the Constitution of India, as holding an office of profit?
2. In case it is held that the office of a Lambardar, held by respondent No. 1, was an office of profit, has this disqualification not been validly removed under the provisions of the Punjab State Legislature (Prevention of Disqualification) Act, 1952, and Punjab Legislative Assembly (Removal of Disqualifications) Act, 1937?
3. Was respondent No. 1 guilty of major, illegal and corrupt practices, in the election on the grounds, referred to in paragraph 3 of the petition? If so, what is its effect?
4. Should the election as a whole be declared void?

After arguments had been heard, an application was put in by respondent No. 1 on which the parties' counsel were heard. The Tribunal decided as per order dated the 28th April, 1953, to hear arguments also on the following two points:

- (1) Whether the allegations, made in the petition relating to the major corrupt practices, said to have been committed by Shri Ratan Amol Singh, can be taken up in this petition and whether these allegations should be scored out as the petition is time barred *qua* these allegations?
- (2) That the verification is not in accordance with the provisions of the Civil Procedure Code and for that reason the petition should be dismissed?

**Issue No. 1.**—It is admitted by respondent No. 1 that he was a Lambardar in the seven villages in Ambala District. The plea, advanced by respondent No. 1, is that his status was not that of an ordinary Lambardar but that he, being a descendant of an independent ruler of Cis-Sutlej State of Buria, was a Jagirdar. It is stated by respondent No. 1 that he was not getting anything as a remuneration for his being a Lambardar and, therefore, he did not hold any office of profit under the Punjab Government. The petitioner, however, has led evidence of P.W. 9 Shri Jai Singh, Patwari of Halqa Ratangarh. The witness stated that village Ratangarh is owned by Shri Ratan Amol Singh except for an area of 145 bighas and 12 biswas which had been alienated by him in favour of various persons. The witness added that the revenue and *Sawai* of this entire area is recovered by Shri Ratan Amol Singh as a Lambardar from the respective owners. With respect to the rest of the area, owned by Shri Ratan Amol Singh, no recovery is obviously made by him from anybody. The witness added that the amount retained by Shri Ratan Amol Singh as Panchotra included the Panchotra relating to the land revenue in respect of these 145 bighas and 12 biswas. The statement of the above witness shows that Shri Ratan Amol Singh did retain some amount of money as Panchotra on account of land revenue of the land that did not belong to him. It is thus clear that so far as the area of land measuring 145 bighas and 12 biswas is concerned, the position of Shri Ratan Amol Singh was no better than that of an ordinary Lambardar. I would, therefore, hold that respondent No. 1 did occupy the status of an ordinary Lambardar with respect to some of the lands.

The next question that arises for consideration is whether respondent No. 1, on account of his being a Lambardar, held an office of profit. A Lambardar, as such, under the Punjab Land Revenue Act has to realise the land revenue and deposit the same in Treasury. He is entitled to a percentage out of the land revenue that he realises in lieu of the service rendered by him for the collection of the land revenue. The amount, retained by the Lambardar, is called Panchotra. Financially thus it is a paying proposition to be a Lambardar because by being a Lambardar one gets some pecuniary advantage. I shall, therefore, hold that the fact, that a man is a Lambardar, shows that he holds an office of profit. The Lambardars realise the land revenue on behalf of the State Government and deposit the same in the Treasury of the State Government. I would, therefore, hold that Shri Ratan Amol Singh held an office of profit under the Government of the Punjab.

The argument, that the status of a Lambardar is an office of profit, also gets support from Punjab Act 7 of 1950. This enactment, which would be reproduced hereinafter, proves that a Lambardar shall not be disqualified for being chosen to the Punjab State Legislature by reason of the fact that he holds an office of profit. The fact, that the Legislature had to bring on the Statute Book, Act VII of 1952, does tend to show that the status of a Lambardar was treated as an office of profit. I shall, therefore, decide Issue No. 1 in favour of the petitioner and hold that respondent No. 1 did hold an office of profit. The question, whether the Legislature of the Punjab State has removed disqualification from respondent No. 1 for his being a Lambardar, would be discussed under Issue No. 2.

*Issue No. 2.*—On this Issue lengthy arguments have been advanced before us and we have also had the benefit of hearing the learned Advocate-General. Article 191(1)(a) of the Constitution of India provides as under:

(1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—

- (a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder,
- (b) .....
- (c) .....
- (d) .....
- (e) .....

It has already been held that the respondent, No. 1, held an office of profit on account of being a Lambardar. The question, now arises, whether the Legislature of the Punjab State has declared by law that the office of Lambardar would not disqualify its holder from being a member of the Legislative Assembly. In this connection it will be useful to refer to the different provisions of law on the subject. Punjab Act II of 1937 provides as under:

*“Preamble.*—Whereas it is expedient to provide in accordance with section 69(1)(a) of the Government of India Act, 1935, that the holders of the offices hereinafter mentioned shall not be disqualified for election to the Punjab Legislative Assembly, it is hereby enacted as follows:—

1. *Short title.*—This Act may be called the Punjab Legislative Assembly (Removal of Disqualifications) Act, 1937.
2. *Removal of certain disqualifications.*—A person shall not be disqualified for being chosen as, or for being a member of the Punjab Legislative Assembly by reason only of the fact that he holds any of the following offices, namely:—
  - (1) the office of Parliamentary Secretary or of Parliamentary Private Secretary, if and when created,
  - (2) any of the offices shown in the schedule to this Act.

#### SCHEDULE

1. Lambardar.....
2. ....
3. ....
4. ....

This Act was passed in pursuance of Section 69 of the Government of India Act of 1935. Section 69(1) provides as under:

(1) A person shall be disqualified for being chosen as and for being, a member of the Provincial Legislative Assembly or Legislative Council,

- (a) if he holds any office of profit under the Crown in India, other than an office declared by Act of the Provincial Legislature not to disqualify its holder,
- (b) .....
- (c) .....
- (d) .....
- (e) .....
- (f) .....

A perusal of section 69(1)(a) shows that the provisions, under the Government of India Act 1935 and those under the Constitution of India as given in Article 191 para. (1) clause (a), were similar. After the coming into force of the Constitution, Punjab Ordinance No. III of 1950 [The Punjab Provisional Legislature (Prevention of Disqualification) Ordinance, 1950] was issued by the Governor of the Punjab which provided *inter alia*:

"that a person shall not be deemed to be disqualified for being a member of the Legislature of the State of Punjab by reason only of the fact that he holds an office of Lambardar."

The Ordinance by its wording, according to section 1, was applicable only to the members of the Provisional Legislature of the Punjab. Subsequent to the above Ordinance, Punjab Act IV of 1950 [The Punjab Provisional Legislature (Prevention of Disqualification) Act 1950], was brought on the Statute Book. The Act was similar in wording to the Ordinance No. III of 1950. This Act also provided that a person would not be deemed to be disqualified for being chosen or for being a member of the State of the Punjab by reason only of the fact that he held an office, *inter-alia*, of a Lambardar. Like the Ordinance, it was expressly provided in this enactment also that this Act would be applicable only to the Members of the Provisional Legislatures of the State functioning under Article 382 of the Constitution.

The general elections were held during December, 1951, and January, 1952. On the 9th of August, 1952, Punjab Act VII of 1952, entitled the Punjab State Legislature (Prevention of Disqualifications) Act of 1952, was published in the extraordinary gazette. The Act runs as under:

"An Act to declare certain offices of profit not to disqualify their holders for being chosen as, and for being, members of the State Legislature. It is hereby enacted as follows:

1. *Short title and commencement.*—(1) This Act may be called the Punjab State Legislature (Prevention of Disqualification) Act, 1952.
- (2) It shall be deemed to have come into force on the 26th day of January, 1950.
2. *Prevention of disqualification for membership of State Legislature.*—A person shall not be disqualified for being chosen as, and for being, a member of the Punjab State Legislature by reason only of the fact that he holds any of the following offices of profit under the Government of India or under the Government of the State of Punjab, namely:—
  - (a) Lambardar,
  - (b) Sub-Registrar, whether departmental or honorary, notary public, oaths commissioner,
  - (c) Officer, non-commissioned officer, and other members of Indian Territorial Force,
  - (d) Officer in the Army Reserve of Officers,
  - (e) A member of any statutory body or authority, or a member of any Committee or other body appointed or constituted by the Punjab Government, and who is not in receipt of a salary but who is paid only travelling and daily allowance during the performance of his duties.
  - (f) A Parliamentary Secretary or a Parliamentary Under Secretary.
3. *Repeal.*—The Punjab Legislative Assembly (Removal of Disqualifications) Act, 1937, and the Punjab Provincial Legislature (Prevention of Disqualification) Act, 1950, are hereby repealed.

The position, taken up by the respondent, is that the disqualification of the respondent on account of his being a Lambardar, was removed by the Punjab Act VII of 1952. It is contended that though this Act was enacted after the elections, it is expressly stated in the Act, sub-section (2):

"It shall be deemed to have come into force on the 26th day of January, 1950."

The learned counsel for the petitioners has argued that Punjab Act VII of 1952 contravenes Article 14 and as such it is not a valid enactment.

Before dealing with the question of validity of the above enactment, it is necessary to decide an objection that the Tribunal is not competent to go into the question of the validity of the enactment. Reliance is placed in this connection on observation made on page 293 of Indian Elections and Election Petitions by Srivastava wherein it has been laid down that an Election Tribunal would have no jurisdiction to question the legality of any Statutory provision or rules. The observation is based upon case Shahbad Central (NMR) 1927 (Hammond p 635).

I, however, find that in a case reported in 1947 Privy Council page 78 *Raleigh Investment Co. Vs. Governor General in Council*, the question arose whether an Income Tax Officer was competent to go into the question as to whether the provisions of the Act were *ultra vires*. It was held by Their Lordships that the Income Tax Act contains machinery which enables the assessee effectively to raise the question whether or not a particular provision of the Act, bearing on the assessment made upon him, is *ultra vires*. It was held that a separate suit was not maintainable. The Representation of the People Act has also provided a forum wherein disputes relating to the election of candidates are adjudicated upon. A machinery, having been provided, the Tribunal would be justified in going into the question and giving its finding with regard to the validity of the enactment.

The learned counsel for the petitioners has argued that the Act VII of 1950 contravenes the provisions of Article 14 as it treats those Lambardars, who have been elected as Members to the Punjab Legislative Assembly as favoured citizens. The argument of the learned counsel is that there must have been a large number of Lambardars who wanted to be elected to the Punjab Legislative Assembly but because it was a disqualification under article 191 of the Constitution, and the disqualification had not been removed, those Lambardars refrained from contesting the elections. The learned counsel concludes that a distinction has thus been made between Lambardars, who stood and were elected to the Assembly and the Lambardars who kept back on the assumption that they were disqualified. Article 13 (paras 1 and 2) and Article 14 of the Constitution run as under

- 13(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void
- (2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void

- 14 The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India

The back-ground of these Articles is given in the minority judgment of Patanjali Sastri C J in case reported in AIR 1952 Supreme Court page 75 at page 79 as under

"The question next arises as to whether the provision, thus understood, violates the prohibition under Article 14 of the Constitution. The first part of the Article, which appears to have been adopted from the Irish Constitution, is a declaration of equality of the civil rights of all persons within the territories of India and thus enshrines what American Judges regard as the "basic principle of republicanism" (cf *Ward v Flood*, 17 Am Rep 405). The second part which is a corollary of the first and is based on the last clause of the first section of the 14th Amendment of the American Constitution, enjoins that equal protection shall be secured to all such persons in the enjoyment of their rights and liberties without discrimination or favouritism, or as an American Judge put it "It is a pledge of the protection of equal laws" *Yick Wo v Hopkins*, (1886) 118 US 356 at p 369, that is laws that operate alike on all persons under like circumstances. And as the prohibition under the article is directed against the State, which is defined in Article 12 as including not only the legislatures but also the Governments in the country. Article 14 secures all persons within the territories of India against arbitrary laws as well as arbitrary application of laws. This is further made clear by defining "Law" in Article 13 (which renders void any law which takes away or abridges the rights conferred by Part III) as including, among other things, any "order" or "notification", so that even executive orders or notifications must not infringe Article 14. This trilogy of articles thus ensures non-discrimination in State action both in the legislative and the administrative spheres in the democratic republic of India."

The learned counsel for the petitioner has relied upon the majority view in the above mentioned case. In that case the Supreme Court considered the validity of the West Bengal Special Courts Act (X of 1950) which provided for a speedier trial of certain offences with the State Government by general or special ordinance in writing direct. The majority view was as under:

"Per Fazl Ali, Mahajan, Mukherjea and Chandrasekhara Aiyar JJ.—The impugned Act has completely ignored the principle of classification followed in the Criminal P.C. and it proceeds to lay down a new procedure without making any attempt to particularize or classify the offences or cases to which it is to apply. (Para. 24).

The Act itself lays down a procedure which is less advantageous to the accused than the ordinary procedure, and this fact must in all cases be the root-cause of the discrimination which may result by the application of the Act. (Para. 27).

Speedier trial of offences may be the reason and motive for the legislation but it does not amount either to a classification of offences or cases. The necessity of a speedy trial is too vague, uncertain and elusive criterion to form the basis of a valid and reasonable classification. (Para. 37).

It is no classification at all in the real sense of the term as it is not based on any characteristics which are peculiar to persons or to cases which are to be subject to the special procedure prescribed by the Act. The mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of Article 14. To get out of its reach it must appear that not only a classification has been made but also that it is one based upon a reasonable ground on some difference which bears a just and proper relation to the attempted classification and is not a mere arbitrary selection. (Para. 37).

Even if it be said that the statute on the face of it is not discriminatory, it is so in its effect and operation inasmuch as it vests in the executive government unregulated official discretion and therefore has to be adjudged unconstitutional. (Para. 38).

A rule of procedure laid down by law comes as much within the purview of Article 14 as any rule of substantive law and it is necessary that all litigants, who are similarly situated, are able to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination. (Para. 45).

If a legislation is discriminatory and discriminates one person or class of persons against others similarly situated and denies to the former the privileges that are enjoyed by the latter, it cannot but be regarded as "hostile" in the sense that it affects injuriously the interests of that person or class. Of course, if one's interests are not at all affected by a particular piece of legislation, he may have no right to complain. But if it is established that the person complaining has been discriminated against as a result of legislation and denied equal privileges with others occupying the same position, it is not incumbent upon him, before he can claim relief on the basis of his fundamental rights, to assert and prove that in making the law, the legislature was actuated by a hostile or inimical intention against a particular person or class.

For the same reason it cannot be contended that in cases like these, the Court should enquire as to what was the dominant intention of the legislature in enacting the law and that the operation of Article 14 would be excluded if it is proved that the legislature had no intention to discriminate, though discrimination was the necessary consequence of the Act. When discrimination is alleged against officials in carrying out the law a question of intention may be material in ascertaining whether the officer acted *mala fide* or not, but no question of intention can arise when discrimination follows or arises on the express terms of the law itself."

The learned counsel for the petitioner also referred to certain American Authorities. It would be useful to reproduce the observations made in those cases:

In 81 Lawyers Edition United States Supreme Court Reports, p. 109 at page 110, it has been laid down as under:

"The equal protection clause of the Fourteenth Amendment does not preclude the states from resorting to classification for the purposes of legislation, but only requires that the classification be reasonable, not arbitrary,

and rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike."

In United States Supreme Court Reports Book, 30 p. 578, it has been laid down:

- "1. The Fourteenth Amendment does not prohibit legislation which is limited in the objects to which it is directed, or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed."

In 66 Lawyers Edition United States Supreme Court Reports p. 255 it has been laid down as under:

- "6. The Legislative discretion to grant or withhold equitable relief in any class of cases must, under the equal protection of the laws clause of U.S. Const. 14th Amend., be so exercised as not to grant equitable relief to one, and to deny it to others under like circumstances and in the same territorial jurisdiction."

In 25 Lawyers Edition United States Supreme Court Reports, p. 989 it has been laid down as under:

- "1. The equality clause in the 1st section of the Fourteen Amendment, viz., that which prohibits any State from denying to any person the equal protection of the laws, contemplates the protection of persons, against unjust discriminations by a State, it has no reference to territorial or municipal arrangements made for different portions of a State.
2. It was not intended to prevent a State from arranging and parceling out the jurisdiction of its several courts as it sees fit, either as to territorial limits, subject-matter or amount, or the finality of their several judgments or decrees.
3. Each State has full power to make political sub-divisions of its territory for municipal purposes, and to regulate their local government, including the constitution of courts, and the extent of their jurisdiction."

Reliance was also placed by the learned counsel for the petitioner on case *Lachhman Dass Kewal Ram v. the State of Bombay* A.I.R. 1952 Supreme Court, p. 235. The Supreme Court, however, in a later case *Syed Qasim Razvi v. State of Hyderabad* reported in A.I.R. 1953, p. 156 at p. 162, considered the observations made in *Lachhman Dass's* case. The majority view in this later case *Syed Qasim Razvi v. State of Hyderabad*, was:

- "It (the Court) has got to consider whether the procedure, actually followed, did or did not proceed upon the basis of the discriminatory provisions. In our opinion a mere threat or possibility of unequal treatment is not sufficient. If actually the accused has been discriminated against, then and then only he can complain, not otherwise."

In A.I.R. 1951 S.C. 318, on page 326, the principles, underlying Article 14 of the Constitution, have been summarised and they run as under:

- "1. The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds.
2. The presumption may be rebutted in certain cases by showing that on the face of the statute, there is no classification at all and no difference peculiar to any individual or class and not applicable to any other individual or class, and yet the law hits only a particular individual or class.
3. The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, and the varying needs of different classes of persons often require separate treatment.
4. The principle does not take away from the State of the power of classifying persons for legitimate purposes.
5. Every classification is in some degree likely to produce some inequality, and mere production of inequality is not enough.

6. If a law deals equally with members of a well defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons.
7. While reasonable classification is permissible, such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the object sought to be attained, and the classification cannot be made arbitrarily and without any substantial basis."

In the present case the contention of the learned counsel for the petitioner is that the Legislature by making the provisions of the Act retrospective has tried to benefit those Lambardars who are fortunate enough to be elected. The important question, therefore, that arises for determination is whether the classification is reasonable or not. As stated above, the second part, of Article 14 of the Constitution, is based upon the last clause of the first section of the 14th Amendment of the American Constitution. It would, therefore, be useful to reproduce the observations made by Prof. Willis in "Constitutional Law" p. 578 which run as under:

"The guaranty of the equal protection of the laws means the protection of equal laws. It forbids class legislation, but does not forbid classification which rests upon reasonable grounds of distinction. It does not prohibit legislation, which is limited either in the objects to which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions both in the privileges conferred and in the liabilities imposed. 'The inhibition of the amendment, was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation.' It does not take from the states the power to classify either in the adoption of police laws or tax laws, or eminent domain laws, but permits to them the exercise of a wide scope of discretion, and nullifies what they do only when it is without any reasonable basis. Mathematical nicety and perfect equality are not required. Similarly, not identity of treatment, is enough. If any state of facts can reasonably be conceived to sustain a classification, the existence of that state of facts must be assumed. One who assails a classification must carry the burden of showing that it does not rest upon any reasonable basis. [Constitutional Law, by Prof. Willis, (Edn. 1, p. 578)]."

These observations were quoted with approval in case the State of Bombay and another V. F. N. Balsara, in A.I.R. 1951 S.C., p. 318 at page 326.

In A.I.R. 1951 S.C., 41 at page 42 also it was laid down as under:

"The presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles."

In A.I.R. 1952 Supreme Court 123, it was held by Patanjali Sastri C. J. with whose ultimate decision the majority of judges concurred as under:

"All legislative differentiation is not necessarily discriminatory. In fact, the word 'discrimination' does not occur in Article 14. The expression 'discriminate against' is used in Article 15(1) and Article 16(2), and it means, according to the Oxford Dictionary, 'to make an adverse distinction with regard to, to distinguish unfavourably from others'. Discrimination thus involves an element of unfavourable bias and it is in that sense that the expression has to be understood in this context. If such bias is disclosed and is based on any of the grounds mentioned in Articles 15 and 16, it may well be that the statute will, without more, incur condemnation as violating a specific constitutional prohibition unless it is saved by one or other of the provisos to those articles. But the position under Article 14 is different. Equal protection claims under that article are examined with the presumption that the State action is reasonable and justified. This presumption of constitutionality stems from the wide power of classification which the legislature must, of necessity, possess in making laws operating differently as regards different groups of persons in order to give effect to its policies."

It was held by Fazl Ali J. as under:

"The clear recital of a definite objective furnishes a tangible and rational basis of classification to the State Government for the purpose of

applying the provisions of the Ordinance and for choosing only such offences or cases as affect public safety, maintenance of public order and preservation of peace and tranquility."

Keeping in view the principles laid down in the above authorities, we have to consider whether Act VII of 1952 made a reasonable classification or not. It is not disputed that there is nothing wrong in exempting the Lambardars from the disqualification imposed under Article 191 of the Constitution by making a specific provision with regard to them. The objection of the petitioner is that the legislature of the Punjab by making the Act retrospective has tried to benefit the few Lambardars, who were lucky to be elected. I may, however, state that so far as the Act is concerned it treats all the Lambardars alike. The Act imposed no inequality of any kind. The effect of bringing on the Statute Book of this enactment was to cure an omission of the Legislature to make law affording protection to the Lambardars from the disqualification of Article 191. Such protection had been enjoyed by them in the past when there existed similar provisions in Government of India Act, 1935, and there was nothing new in the protection. The Legislatures in the other states also gave similar protection to persons holding positions analogous to Lambardars. The Provisional Legislature enacted Punjab Act IV of 1950 which only gave protection to Lambardars who were Members of the Provisional Legislature. The Act VII of 1950 on the face of it does not try to discriminate. It treats all Lambardars alike, and gives similar protection to all of them. The retrospective application of the Act to all Lambardars, does not, in my opinion, offend against the principle of reasonable classification. Assuming that there were some Lambardars, whose nomination papers for the State Assembly were rejected on the ground of their being Lambardar, they could have equally taken the benefit of this enactment in case they had filed election petitions. It is possible, as argued by the learned counsel for the petitioner, that there were some Lambardars whose nomination papers were rejected and they did not file election petitions, and it is possible, thus, that in those cases the impugned Act might have resulted in some differentiation, but the Act is not to be condemned merely on that score. It has been laid down in A.I.R. 1953 Supreme Court, p. 91:

"A legislature which must, of necessity, have the power of making special laws to attain particular objects must have large powers of selection or classification of persons and things upon which such laws are to operate. Hence mere differentiation or inequality of treatment does not per se amount to discrimination, and it is necessary to show that the selection or differentiation is unreasonable or arbitrary and that it does not rest on any rational basis having regard to the object which the legislature has in view in order to invalidate an enactment under Article 14.

Moreover as laid down in Syed Qasim Razvi's case, a mere threat or possibility of unequal treatment is not sufficient. If actually the accused has been discriminated against, then and then only he can complain, not otherwise.

Keeping the above test in view, and also having regard to the object of the enactment, namely to remove the disqualification imposed under Article 191 of the Constitution the selection or differentiation is neither unreasonable nor arbitrary. It has also not been shown not to rest on any rational basis. The enactment fulfils the requirement laid down in the Constitutional Law by Professor Willis "that all persons subjected to such legislation shall be treated alike under like circumstances and conditions both in the privileges conferred and in the liabilities imposed."

It was argued by the learned counsel for the petitioner that the Legislature should not have brought this Law on the Statute Book as it benefited the Lambardars who had been elected. In my opinion it is not for a court of Law to go into ethics behind the legislation. The Courts are only concerned with the question as to whether the classification is reasonable or not. It has been laid down in A.I.R. 1952 Supreme Court, page 123 at page 131:

"It is well settled that a legislature for the purpose of dealing with the complex problems that arise out of an infinite variety of human relations, cannot but proceed upon some sort of selection or classification of persons upon whom the legislation is to operate. The consequence of such classification would undoubtedly be to differentiate the persons belonging to that class from others, but that by itself would not make the legislation obnoxious to the equal protection clause. Equality prescribed by the Constitution would not be violated if the statute operates equally on all persons who are included in the group,

and the classification is not arbitrary or capricious, but bears a reasonable relation to the objective which the legislation has in view. The legislature is given the utmost latitude in making the classification and it is only when there is a palpable abuse of power and the differences made have no rational relation to the objectives of the regulation, that necessity of judicial interference arises."

In A.I.R. 1953 Supreme Court. p. 10 it was held that even a classification can be made on geographical basis. The Supreme Court in that case held "The Abducted Persons (Recovery and Restoration) Act, 1949", to be valid. In the present case as the impugned Act applied to all Lambardars retrospectively and thus gave protection to all Lambardars who had been elected from being disqualified, without making any distinction as between those Lambardars, in my opinion the Act is valid and is not hit by the provisions of Article 14 of the Constitution.

It is also contended by the respondent that the disqualification imposed upon him by Article 191 does not apply to him in view of the Punjab Legislative Assembly (Removal of Disqualifications) Act 1937. Though my view is that the Act of 1937 does not afford protection to respondent No. 1 because it was not enacted after the coming into force of the Constitution in pursuance of Article 191; as I have, however, already held that the Punjab Act VII of 1952 gives enough protection to the respondent, it is not necessary to go into the effect of the Act of 1937.

**Issue No. 3.**—The petitioner has alleged that the respondent, No. 1, was guilty of corrupt and illegal practices on the ground that the respondent had obtained the assistance, in furtherance of his election, from Lambardars and Sarpanches, by appointing them as polling agents. The learned counsel for the respondent has advanced fourfold arguments in answer to this allegation.

- (1) That the petition is time barred so far as the allegations, covered in this Issue, are concerned.
- (2) That the petitioner has confined his petition with regard to declaration that the election is wholly void. It is urged that the petitioner is, therefore, confined only to grounds given in section 100 sub-section (1) and the allegation covered in this issue is not one of those grounds.
- (3) Assuming that the respondent employed Lambardars and Sarpanches as polling agents, that fact would not show that the respondent obtained their assistance in furtherance of his election prospects.
- (4) It has not been alleged and shown that the respondent No. 1 was aware at that time, when he appointed Lambardars and Sarpanches as his polling agents, that they were in fact Lambardars and polling agents.

The first two contentions, urged on behalf of the respondent, may, for convenience sake, be taken together. The argument, of the learned counsel for the respondent, Mr. Daphtry, is that the present election petition was filed after the expiry of 14 days from the date of the publication of the notice in the official gazette, that the Return of Election Expenses of respondent No. 1 and the declaration in respect thereof had been lodged with the Returning Officer. It is contended that the petitioner could only urge the grounds, relating to employment of Lambardars and Sarpanches as polling agents, as a ground for setting aside the election if the election petition had been filed within the aforesaid 14 days. To appreciate this point, it would be necessary to reproduce Rule 119 that deals with the question of Limitation and sub-sections (1) and (2) of Section 100 which give the grounds for declaring an election to be void. Rule 119 runs as under:

119. Time within which an election petition shall be presented.—An election petition calling in question an election may:—

- (a) in the case where such petition is against a returned candidate, be presented under section 81 at any time after the date of publication of the name of such candidate under section 67 but not later than fourteen days from the date of publication of the notice in the Official Gazette under rule 113 that the return of election expenses of such candidate and the declaration made in respect thereof have been lodged with the returning Officer, and
- (b) in the case where there are more returned candidates than one at an election and the election petition calls in question the election as a whole, be presented under the said section 81 at any time after the date of publication of the names of all the returned candidates under section 67 but not later than sixty days from the expiration of the time specified in sub-rule (1) of rule 112 for the lodging of the returns of election expenses of those candidates with the Returning Officer

Sub-sections (1) and (2) of Section 100 of the Representation of the People Act, 1951, run as under—

100 Grounds for declaring election to be void—

(1) If the Tribunal is of opinion—

- (a) that the election has not been a free election by reason that the corrupt practice of bribery or of undue influence has extensively prevailed at the election, or
- (b) that the election has not been a free election by reason that coercion or intimidation has been exercised or resorted to by any particular community, group or section on another Community, group or section, to vote or not to vote in any particular way at the election, or
- (c) that the result of the election has been materially affected by the improper acceptance or rejection of any nomination,

the Tribunal shall declare the election to be wholly void

*Explanation*—In clause (b) of this sub-section the expression “coercion or intimidation” means any interference or attempt to interfere by whatever means with the free exercise of the right to vote or refrain from voting at an election, and includes a social or economic boycott of members of a community, group or section or threat of such boycott, with intent to interfere with the free exercise of such right by those members

(2) Subject to the provisions of sub section (3), if the Tribunal is of opinion—

- (a) that the election of a returned candidate has been procured or induced or the result of the election has been materially affected, by any corrupt or illegal practice or
- (b) that any corrupt practice specified in section 123 has been committed by a returned candidate or his agent or by any other person with the connivance of a returned candidate or his agent, or
- (c) that the result of the election has been materially affected by the improper reception or refusal of a vote or by the reception of any vote which is void, or by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act or of any other Act or rules relating to the election, or by any mistake in the use of any prescribed form

the Tribunal shall declare the election of the returned candidate to be void

The obtaining of the assistance of a Lambardar and a Sarpanch for the furtherance of the prospects of a candidate's election has been made a corrupt practice under section 123(8) of the Representation of the People Act which runs as under—

“The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the connivance of a candidate or his agent, any assistance for the furtherance of the prospects of the candidate's election from any person serving under the Government of India or the Government of any State other than the giving of vote by such person”

The allegation of the petitioner that the respondent obtained the assistance of Lambardars and Sarpanches falls under sub-section 2(b) of section 100. The allegation is in no way covered by sub-section (1) of section 100, as it is not the petitioner's case that the aforesaid corrupt practice prevailed exclusively. Sub-section (2) of section 100 deals only with grounds for declaring the election of the Returned Candidate to be void. It does not deal with the grounds for declaring the election to be wholly void which is dealt with exclusively in sub-section (1) of Section 100. Clause (b) of Rule 119 deals with cases where the election is called in question as a whole and prescribes a longer period of limitation. In the present case an objection was taken that the election petition was barred by limitation. The petitioner's counsel on the 20th September, 1951 made a statement that the election was void as a whole and that that was the claim which had been made by the petitioner. The petitioner thus took his stand exclusively on section 100 sub-section (1), for it is only that sub-section that deals with the relief of declaring the election void as a whole. The petitioner having taken up one definite position cannot urge grounds which deal not with the question of declaring the election as a whole void but only with the declaring of the election of the returned candidate as void.

It may be that cases can be found where allegations are covered both by sub-section (1) of section 100 as well as sub-section (2). For example where a

petitioner alleges that corrupt practice of bribery or undue influence, indulged in by the returned candidate, has extensively prevailed at the election. In such a case supposing the petitioner fails to prove that the alleged corrupt practices prevailed extensively and he only proves one or two instances of such corrupt practice. The allegation, in such a case though originally falling under sub-section (1) of section 100, would be covered by sub-section (2) of clause (b). In those cases it may possibly be argued that the petitioner, though relying originally on the allegations covered by sub-section (1) of section 100, has proved his case under sub-section (2) and is entitled to relief under sub-section (2). Such a contingency, however, does not arise in the present case. Here the allegation about the respondent, No. 1, having employed a few Lambardars and Sarpanches as his polling agents, does not at all fall under sub-section (1) of section 100 but is covered exclusively by sub-section (2) of section 100. The petitioner has confined himself only to the relief given in sub-section (1) and has not sought the alternative relief that the election of the returned candidate is void. In my opinion, it is not open to the petitioner to take advantage of the grounds which are not covered by sub-section (1) but only by sub-section (2) of Section 100.

It is also contended by Mr. Daphtry that clause (b) of rule 119 deals with cases where the election is called in question as a whole and prescribes a longer period of limitation. Where the petitioner seeks to challenge the election of the returned candidate, it is argued, he has to put in the election petition within a shorter period prescribed by clause (a) of rule 119. As the ground, calling in question the validity of election on the ground that the respondent was guilty of corrupt practice, inasmuch as he obtained the assistance of Lambardars and Sarpanches, is one, given in sub-section (2) of section 100, for which there is a smaller period of limitation, the learned counsel concludes, that after the expiry of the aforesaid period, the petitioner cannot rely on that ground. In my opinion there is force in this contention of the learned counsel. The fact that the respondent No. 1, obtained assistance of a few Lambardars and Sarpanches can result only in setting aside the election of respondent No. 1, but it cannot result in setting aside the election as a whole. The petition, qua this allegation, falls under rule 119 clause (a) and not clause (b). It is not disputed that if the period of limitation were computed according to clause (a), the petition would not be within limitation. The respondent, by being elected, has acquired a valuable right and if his election is not challenged within the prescribed time, on the grounds which can be taken within that prescribed time, those grounds cannot subsequently be urged against him, and his rights, qua those grounds, get screened by limitation. I, therefore, hold that the petition is barred by limitation qua the ground that respondent No. 1 obtained the assistance of Lambardars and Sarpanches. The petitioner cannot urge the grounds covered by Issue No. 3. In this view of the matter it is also not necessary to deal with the other points raised by the counsel for the respondent on Issue No. 3 nor is it essential to give a finding on Issue No. 3.

It was also urged by the respondent that verification of the petition was not in accordance with the provisions of the Civil Procedure Code and for that reason, the petition should be dismissed.

The argument of the learned counsel is that the petitioner has not stated as to what facts were true and correct to his knowledge and what were true and correct to his belief. In my opinion, the verification substantially complies with law. Assuming that verification did not fully conform with law, sub-section (4) of section 90 of the Representation of the People Act gives a discretion to the Tribunal to dismiss an election petition which does not conform with the provisions of Sections 81, 83 or 117. The provisions of sub-section (4) of section 90 are in marked contrast to the provisions of section 85. The first para. of section 85 runs as under:

"If the provisions of section 81, section 83 or section 117 are not complied with, the Election Commission shall dismiss the petition".

Sub-section (4) of section 90 runs as under:

"Notwithstanding anything contained in section 85, the Tribunal may dismiss an election petition which does not comply with the provisions of section 81, section 83 or section 117".

The fact that the word used in sub-section (4) of section 90 is "may" while in section 85 the word used is "shall", shows that the Tribunal has discretion in the matter. Of course the discretion has to be exercised judicially. In the present case it has not been shown that respondent No. 1 has been prejudiced in any way by the petitioner's omission to specify the paras. which he verified from his knowledge and the other paras. which he verified from his belief. The fact that no such objection was initially taken and was sought to be raised only after the

close of the evidence, also shows that no prejudice was caused to the respondent No 1. I, therefore, hold that the verification is substantially in accordance with the provisions of the Civil Procedure Code. It has also further not been shown that the petition should be dismissed on that score.

*Issue No 4*—As the petition is being dismissed, Issue No 4 does not arise. The petition consequently fails and is dismissed. As the Act VII of 1952, on account of which the election petition is being dismissed, was not even in existence when the present petition was filed I shall leave the parties to bear their own costs. The petitioner shall, however, pay Rs 200 as costs to the Advocate General, Punjab State, and Rs 50 to the Local Government Pleader, who assisted the Advocate General in these proceedings.

(Sd) HANS RAJ KHANNA, *Judicial-Member*,

Election, Tribunal, Ludhiana

LUDHIANA,  
The 24th June, 1953

Shri Maharaj Singh *Versus* Shri Ratan Amol Singh etc

### ORDER

(PER PARMANAND SACHDEVA, *Advocate-Member*).

I had the benefit of carefully perusing the Order proposed to be passed in this case by my learned brother (Shri Hans Raj Khanna, Judicial Member of the Tribunal). I find myself in agreement with his finding on Issue No 1, but with due respects I differ from his finding on Issue No 2, for reasons to be stated hereafter.

With regard to Issue No 3 I also agree with his finding that the allegations relating to the major corrupt practices, alleged to have been committed by Shri Ratan Amol Singh cannot be taken into consideration and have to be scored out from the petition on account of being time barred.

*Issue No 2*—There is no doubt that the Office of a Lambardar is an office of profit under the Punjab State and a disqualification under Article 191(1)(a) of the Constitution of India which provides that—

(1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—

(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder,

This provision in the Constitution is more or less a reproduction of Section 65 of the Government of India Act, 1935, which provided that—

(1) A person shall be disqualified for being chosen as, and for being, a member of the Provincial Legislative Assembly or Legislative Council,

(a) If he holds any office of profit under the Crown in India, other than an office declared by Act of the Provincial Legislature not to disqualify its holder.

It will be better to trace the history of legislation regarding the removal of disqualification passed by the Punjab Legislative Assembly from time to time.

In 1937 the Punjab Legislature passed an Act known as the Punjab Legislative Assembly (Removal of Disqualifications) Act II of 1937 which runs as follows

*Preamble*—"Whereas it is expedient to provide in accordance with section 69(1)(a) of the Government of India Act, 1935, that the holders of the offices hereinafter mentioned shall not be disqualified for election to the Punjab Legislative Assembly, it is hereby enacted as follows.—

1 *Short title*—This Act may be called the Punjab Legislative Assembly (Removal of Disqualifications) Act, 1937

2 *Removal of certain disqualifications*—A person shall not be disqualified for being chosen as or for being a member of the Punjab Legislative Assembly by reason only of the fact that he holds any of the following offices, namely—

(1) the office of Parliamentary Secretary or of Parliamentary Private Secretary, if and when created,

(2) any of the offices shown in the schedule to this Act.

## SCHEDULE

- 1 Lambardar. ....
- 2 .....
3. ....
4. ....

After partition the sitting Members constituted the provisional legislature of the Punjab State and as the office of a Lambardar was an office of profit under the State, according to the Constitution, Ordinance No. III of 1950, was issued by the Governor of the Punjab to the effect that:

"A person shall not be deemed to be disqualified for being a member of the Legislature of the State of Punjab by reason only of the fact that he holds an office of Lambardar".

This ordinance by its very wording showed that it was meant only to protect the Lambardar members of the Provincial Legislatures of the Punjab. Thereafter Punjab Act IV of 1950 [The Punjab Provincial Legislature (Prevention of Disqualification) Act, 1950], came into force and this was practically a reproduction of the Ordinance III of 1950. This was also applicable only to the sitting members of the Provisional Legislature of the State—then functioning under article 382 of the Constitution.

It is necessary to examine the provisions of Act II of 1937, with a view to see whether these could remain alive and be in force after the promulgation of article 191 of the Constitution. It may be stated that the Provisional Legislature of the State, was fully alive to the fact that as the provisions of Act II of 1937 were directly in conflict with the clear provision of the Constitution, that Act clearly stood repealed and the necessity was felt for getting first an Ordinance III of 1950 and the Act IV of 1950 passed with a view to protect the Lambardar members of the Provisional Legislature in the State. Similarly after the first regular elections based on adult franchise in accordance with the New Constitution, the present Punjab Legislative Assembly was formed. The elections were practically over in the month of January and the members took the oath of allegiance in the first meeting of the Assembly on 3rd May 1952. The State Assembly brought on the Statute Book Act VII of 1952 known as the Punjab State Legislature (Prevention of Disqualification) Act, 1952, providing that a person shall not be disqualified for being chosen as and for being a member of the Punjab State Legislature by reason only of the fact that he holds any of the offices of profit under the State including that of a Lambardar.

It is important to note that under section 1(2) it was laid down that this Act shall be deemed "to have come into force on the 26th day of January, 1950". It may further be noted that by section 3 of the said Act, the Punjab Legislative Assembly (Removal of Disqualifications) Act 1937 and the Punjab Provisional Legislature (Prevention of Disqualification) Act 1950, were repealed.

With a view to fully appreciate the background of this legislation it is necessary to reproduce at length the Statement of Objects and Reasons of this Act as given in Bill No. XII of 1952 which runs as below:

"A Bill to declare certain offices of profit not to disqualify their holders for being chosen as and for being, members of the State Legislature".

## STATEMENT OF OBJECTS AND REASONS

"Article 191(1)(a) of the Constitution of India provides that a person shall be disqualified for being chosen as, and for being, a member of the House of Legislature of a State, if he holds any office of profit under the Government of India or the Government of any State, specified in the 1st Schedule to the Constitution, other than an office declared by the Legislature of the State by law not to disqualify its holder.

This Bill accordingly seeks to save from disqualification members of the first Legislature of the State following the first general elections held under the Constitution of India, who held an office under the State Government which was not a whole-time office and to which no regular salary was attached. For the future, the legislation will secure that the electorate will not be debarred from choosing as members of the State Legislature, persons who, though they hold certain offices, which might be called offices of profit under the State Government, are not whole-time Government servants. It is also intended to save from disqualification persons, who might be appointed to legislative offices such as Parliamentary Secretaries etc."

The above clearly shows that the Bill, which subsequently took the shape of Act VII of 1952, was moved for securing three objects:

- (a) to save from disqualification members of the 1st Legislature of the State following the 1st General Elections held under the Constitution of India, who held an office of profit under the State Government (Lambardar etc.),
- (b) to legislate for future that the electorate will not be debarred from choosing as members of the State Legislature, persons though they held certain offices of profit under the State Government including the office of a Lambardar,
- (c) to save from disqualification persons who might be appointed to legislative offices such as Parliamentary Secretary.

The above Act was passed on 9th August, 1952, and published in Punjab Government Gazette Extraordinary vide notification dated the 9th August, 1952.

Objects, mentioned at (b) and (c) would very easily be secured even if the Act had come into force from 9th August, 1952, i.e., the date of its promulgation, but object at (a) i.e., to save from disqualification some members of the 1st Legislature of the State, i.e., Lambardars who had been elected to the Assembly, could not be secured without making provision in Section 1(2) that the Act shall be deemed to have come into force on the 26th day of January, 1950, i.e., the date on which the major portion of the Constitution came into force.

There is no dispute with regard to the powers of the Legislative Assembly to pass an Act of the kind and to make it applicable from the date of its promulgation for securing the objects mentioned at (b) and (c) above. But it is strongly contended on behalf of the petitioner that the provision with regard to making the Act, passed on 9th August, 1952, retrospective in effect (deemed to have come into force on the 26th day of January, 1950) is *ultra vires* of the Constitution.

With a view to examine this aspect of the case, it is first necessary to make a few introductory observations.

Lambardari is an old institution of the Punjab State and Lambardars are a well defined class by themselves.

The present Punjab State Assembly also appears to be fully alive to the fact that the Punjab Legislative Assembly (Removal of Disqualifications) Act 1937 and the Punjab Provisional Legislature (Prevention of Disqualification) Act 1950, were not sufficient to protect the lambardar members of the present State Assembly, and, therefore, decided to promulgate Act VII of 1952 on 9th August, 1952, and provided that it shall be deemed to have come into force on the 26th day of January, 1950. In case the old Acts, mentioned in Section 3 of the new Act, were legally sufficient to achieve the objects (a), (b) and (c) mentioned above, there was hardly any need of placing this Act on the Statute Book. It was argued on behalf of the respondents that the Act was passed by way of taking abundant care and precaution that if the old Acts were not legally sufficient to ensure the three objects, mentioned in the Statement of Objects and Reasons, this Act would achieve the said objects. The very fact, that the law officers of the Government were in doubt as to the exact position of the state of law, the whole question has to be examined more closely. The respondent contended that the disqualification, imposed on him by Article 191 of the Constitution, does not apply to him in view of the removal of Disqualification Act 1937. This position is untenable as the provisions of this Act were inconsistent with the Statutory provision relating to disqualification, as laid down in Article 191 of the Constitution. Therefore, this Act must be considered to have been automatically repealed from the date of promulgation of the Constitution. On this point I am in agreement with the views expressed by my learned brother that the Removal of Disqualification Act of 1937 cannot afford any protection to the respondent.

I am thus clearly of the view that respondent No. 1 was disqualified from standing as and for being chosen as and for sitting as a member of the Punjab Legislative Assembly on account of his holding an office of profit, i.e., the post of a lambardar under the Punjab State.

In case the Act had not been given a retrospective effect from 26th January, 1950, the respondent was clearly disqualified from standing as or for being chosen as a member of the Assembly on account of the following reasons:

Lambardari was a disqualification—

- (a) on the date when the Governor called upon the various constituencies to elect members,
- (b) on the date of nominations (5th November 1951),

- (c) on the date of scrutiny (9th November 1951),
- (d) on the date of election (January, 1952),
- (e) on the date of Gazette notifications (March-April, 1952),
- (f) on the date of the first meeting of the Assembly (3rd May 1952),
- (g) on the date of filing the present election petition (28th May 1952), and
- (h) on the date of the Constitution of the Tribunal for hearing this petition (16th July 1952).

But for the provision making this Act retrospective from 26th January 1950, all Lambardar members of the Legislative Assembly or the Legislative Council of Punjab State had incurred penalty under Article 193 of the Constitution, which provided that:—

"If a person sits or votes as a member of the Legislative Assembly or the Legislative Council of a State before he has complied with the requirements of Article 88 or when he knows that he is not qualified or that he is disqualified for membership thereof or that he is prohibited from so doing by the provisions of any law made by the Parliament or the Legislature of the State, he shall be liable in respect of each day, on which he so sits or votes, to a penalty of Rs. 500 to be recovered as a debt due to the State".

Keeping in view the various dates, given above on which Lambardari was and continued to be a disqualification but for the retrospective applicability of Act VII of 1952, Lambardars, who formed a well known class by themselves, may be divided into the following categories:

- (1) Those belonging to the class who thought they were not qualified to stand in view of the clear provision of the Constitution,
- (2) Those, who thought of standing for election but were prevented after seeking legal advice from doing so on account of the above provision,
- (3) Those who were either not conversant with the disqualification clause or thought it proper to ignore it and filed their nomination papers,
- (4) Those whose nomination papers were rejected on objection being taken against them on the ground of disqualification under Article 191 (instances are not lacking),
- (5) Those who took this result as final and legally, binding and never cared to file an election petition as the law had not changed by that time,
- (6) Those against whom there was no objection on the scrutiny date and they contested election with success but against whom no election petition has been filed because the law was not changed by that time.
- (7) And finally those who have been returned and against whom election petitions have been filed (respondent No. 1 in the above case and Shri Shamsher Singh, respondent No. 1 in another petition, Shri Sant Singh *versus* Shri Shamsher Singh pending with this Tribunal).

Section 1(2) of the Act seeks to protect the last two categories of the Lambardars by making the Act retrospective from the 26th day of January, 1950. It is strongly contended on behalf of the petitioner that this retrospective clause of the Act is *ultra vires* of the fundamental rights, i.e., rights of equality as laid down in Article 14 of the Constitution and being inconsistent with and in derogation of the fundamental rights is void under Article 13(1) of the Constitution.

Normally all laws are prospective and came into force from the date of their promulgation and if Act VII of 1950 had been made to come into force from 9th August, 1952, nobody could take any objection to it because the State Legislature had full authority to pass an Act of the kind under Article 191(1)(a). It has been argued with force before the Tribunal that the clause enforcing the Act from 26th January 1950 has been provided only to favour the few fortunate Lambardars falling in the last two categories, i.e., Nos. 6 and 7, as given above. Thus the Act is discriminatory in its application inasmuch as the remaining categories of Lambardars, Nos. 1 to 5, could not possibly get any advantage of the Act as they were not in a position to anticipate that an Act of the kind would be passed on 9th August 1952 and made retrospective from 26th January 1950.

Various authorities have been cited by both the parties before the Tribunal laying down certain principles under which an Act passed by a State Legislature has been held to be *ultra vires* or *intra vires* of the Constitution and some of these have been cited in the order passed by my learned brother. I have carefully gone through all the authorities both for and against but I have not come across any

ruling of the Hon'ble Supreme Court which might be called on all four with the facts of the present case and which might be taken to be binding on the Tribunal for final adjudication on the point in issue. The clause, making the Act retrospective in application, is objected to and it is to be seen whether this is *intra vires*. There is no doubt that a Legislature has powers to make an Act retrospective but it is to be seen whether the underlying motives and objects, for making it retrospective, are sound, reasonable, and *bona fide*. The object for making it retrospective has been clearly expressed in the Statement of Objects and Reasons in the following words—

“to save from disqualification the Lambardar members of the 1st Legislature of the State following the first general election held under the Constitution of India”.

This by itself is not sufficient justification for making the Act retrospective as it discriminates and differentiates between the various categories of Lambardars enumerated in Nos. 1 to 7 and places categories Nos. 6 and 7 at an advantage over the remaining categories Nos. 1 to 5.

The learned Advocate General of the State and Mr. Daphtry, the learned Advocate for the respondent, tried to meet the arguments of the petitioner that the Act was discriminatory in its nature by submitting that there was nothing to prevent those Lambardars, whose nomination papers were rejected, from filing the election petitions and they could also get equal benefit from the Act. This argument is both fallacious and untenable as these persons could not possibly imagine that a legislation of the kind was in contemplation and would be ultimately brought on the Statute Book.

Article 173 of the Constitution lays down qualification for membership of the State Legislature as below:

“A person shall not be qualified to be chosen to fill a seat in the legislature of a State unless he,

- (a) is a citizen of India;
- (b) is, in the case of a seat in the Legislative Assembly, not less than 25 years of age, and, in the case of a seat in the Legislative Council, not less than 30 years of age, and
- (c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.”

In the preamble to the Constitution it is specifically laid down to the following effect:

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC and to secure all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; etc. etc.

In view of the above provisions, equality of status and of opportunity ought to be provided to all the members of Lambardar class, i.e., whether they are qualified to stand or not qualified to stand. They were not qualified to stand under Article 191(1)(a) and the State Legislature had a Statutory right to remove this disqualification but was not justified in differentiating in the manner between the various categories of Lambardars and making this discriminatory legislation simply for protecting the few Lambardars returned to the Assembly and retaining them as members of the said Assembly. It is nowhere stated in the Statement of Objects and Reasons that why the Legislature thought it necessary to make the Act retrospective and why it was considered absolutely essential to retain these few persons as members of the Assembly, by making the Act retrospective in application. As this provision is a clear denial of the rights of equality between the various members of the class of Lambardars, I am of the opinion that the provision making the Act retrospective from 26th January, 1950, is clearly *ultra vires* of the Constitution.

The majority view of the A.I.R. 1952 Supreme Court reproduced at length, in the order of my learned brother at page 11 may be read with advantage as supporting the above view. Applying the principles laid down in the said view to the facts of the present case it may be stated that the Act under discussion (VII of 1952) has been made retrospective without making any effort to show its justification. The Act, as already remarked, places Lambardars of categories 6 and 7 at an advantage over their brethren in categories 1 to 5, and thus is discriminatory. The

classification made is neither just nor reasonable ground. This legislation is discriminatory and discriminates one set of Lambardars as against other similarly situated and denied to the latter the privileges that are enjoyed by the former and, therefore, it has to be regarded as hostile in the sense that it effects injuriously the interests of the first five categories. Even the ruling cited in 81 *Lawyers Edition United States Supreme Court Reports*, P. 109 at page 110, reproduced at page 13 of my learned brother's Order, provides "that the classification for the purposes of legislation is permissible but the classification must be reasonable, not arbitrary and rest upon some ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstanced shall be treated alike".

Similarly the quotation reproduced from the United States Supreme Court Reports, Book 30, p. 578, reproduced at page 13 of my learned brother's Order, lays down "that all persons subjected to such legislation shall be treated alike under like circumstances and conditions both in the privileges conferred and in the liabilities imposed". This would show that the Act in dispute, so far as it removes the disqualifications of a Lambardar for future, this guarantees equal treatment to all the Lambardars but the provision to make it retrospective places some Lambardars in an advantageous position, over their unfortunate brethren as enumerated in the various categories.

There is no doubt that the presumption is always in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. A perusal of the Statement of Objects and Reasons of the Act especially the object, (a), as mentioned above, "to protect the sitting Lambardar Members of the Assembly from disqualification is a very eloquent proof of the discriminatory nature of the legislation". Discrimination involves an element of unfavourable bias and it is in that sense that the expression has to be understood in this context.

The quotation reproduced at page 19 in the order of my learned brother from All India Report 1952 Supreme Court page 123 at p. 131 lays down a very important proposition of law bearing on the subject to the effect that:

"equality prescribed by the Constitution could not be violated if the Statute operates equally on all persons who are included in the group and the classification is not arbitrary or capricious but bears a reasonable relation to the objective which the legislation has in view".

The above shows that the legislature has full latitude in making the classification and it is only when there is a palpable abuse of the power and the differences made have no rational relation to the objectives of the regulation, that necessity of judicial interference arises.

Applying the above tests to the retrospective clause of the above Act, it is clear that the classification of the Lambardars benefited by the Act is not only arbitrary or capricious but bears no reasonable relation to the objective which the legislation has in view.

In view of the above I am clearly of the opinion that the office of Lambardar, held by respondent No. 1 was an office of profit and this disqualification has not been validly removed under the provisions of Act VII of 1952, which is clearly *ultra vires* of the Constitution. I would, therefore, find Issue No. 2 in favour of the petitioner.

**Issue No. 4.**—In view of my finding on issue No. 2, the Constituency being a double member constituency, the election as a whole has to be declared void.

The result is that the petition is accepted and the election is declared to be wholly void.

In view of the fact that the petitioner never raised any objection to the validity of the nomination paper of respondent No. 1 before the Returning Officer and the allegations of the petitioner, with regard to corrupt practices, alleged to have been committed by the respondent, have been struck off as time barred and the election is set aside as wholly void, on the interpretation of a Statute, which is purely a question of law, I think, it will be but proper to leave the parties to bear their own costs in the proceedings.

(Sd.) P. N. SACHDEVA, Advocate-Member,  
Election Tribunal, Ludhiana.

Shri Maharaj Singh *versus* Shri Rattan Amolsingh.

(PER HARBANS SINGH, *Chairman*.)

I have had the advantage of reading the orders proposed to be delivered by my colleagues.

2. Issues Nos. 1 and 2 in this petition are the same as issues Nos. 1 and 3 in Election Petition No. 155/52. Shri Sant Singh *versus* Shri Shamsher Singh etc. For the reasons given by me in the latter, which need not be reproduced here, I respectfully agree with the conclusion arrived at by my learned colleague, Mr. Khanna, on these issues.

3. Having given my best consideration to the arguments advanced by the learned counsel for the respondent and the view taken by my learned colleague on issue No. 3. I still stick to the position taken by me in Election Petition No. 301 of 1952, Shri Rattan Singh *versus* Shri Devindar Singh, while disposing of the preliminary issues vide order dated 6th of December, 1952, that the grounds mentioned in Sub-Sections 1 and 2 of Section 100 cannot be treated in two separate compartments being mutually exclusive. If in a petition the election is attacked as a whole, and such a petition is within time under rule 119(b), then other grounds of attack detailed in Sub-Section (2) of Section 100 can also be urged therein, and the relief of setting aside of the election of a returned candidate, being a lesser relief than the relief of the election being declared as wholly void, could be granted by the Tribunal, if on the evidence brought on the record, the grounds under Section 100(1) are not proved, but those under Sub-Section (2) of Section 100 are proved. The relevant portion of my order mentioned above is as follows:-

"Supposing, during an election, practice of bribery or of undue influence had extensively prevailed at the election. This would be a ground falling under clause (a) of Sub-Section 1, on proof of which the election shall have to be declared wholly void. In the same election a returned candidate A personally gave bribe to some of the voters. This would be a ground covered by clause (b) of Sub-Section 2, on proof of which the returned candidate A's election shall have to be declared void. Should a petitioner be not allowed to allege both these illegalities in the petition filed by his challenging the election? And should he not be allowed to claim both the reliefs in the alternative? Of course, the bigger relief of the election being declared wholly void would cover the smaller relief of declaring the election of the returned candidate A to be void; but supposing, the Tribunal trying the case, though not finding it proved that bribery prevailed extensively at the election, yet finds that A did give bribe, then should not the petitioner be allowed to fall back upon the alternative relief? And, in any case would the Tribunal be debarred from granting him this relief whether claimed by him or not?

Let us take another illustration, where the allegations are not of similar nature, as was the case in the above example. Nomination papers of A had been rejected on grounds which appear to be improper and this materially affected the result of the election—a ground given in clause (c) of Sub-Section 1; in the same election B, one of the returned candidates also gave bribe. On the basis of the first allegation, the petitioner can ask for the whole election being set aside, while on the latter, he can only ask for B being unseated. If the grounds under Sub-Sections 1 and 2 are to be treated as mutually exclusive, the petitioner would not be able to take both these grounds, and this would leave the petitioner one of the two alternatives as follows:

Either (1) the petitioner should, neither allege nor prove some of the irregularities or illegalities that prevailed during the election, or (2) the petitioner should bring two separate petitions, one containing allegations falling under Sub-Section 1 and claiming the relief of election being declared to be wholly void, and the other containing allegations under Sub-Section 2 with the relief against the returned candidate B only.

The first alternative would run completely counter to the very object of the Election Law. It is well recognized that election petitions are provided to ensure the purity of elections which are the corner stone-

of Democracy. It is obvious, therefore, that any interpretation of the law relating to the election petitions, which tends to clog or hamper the attainment of this main underlying object must be discarded. The other alternative, on the face of it, is absurd and offends against the well established and salutary rule of avoidance of the multiplicity of trials and litigation.

To my mind it is clear, therefore, that from all points of view it is unthinkable to treat the grounds in Sub-Sections 1 and 2 of Section 100 in two separate compartment and mutually exclusive .....

.....In fact, the important part of the petition—just as in the case of a civil suit or a criminal complaint—is the statement of facts, i.e., the allegations of illegal or corrupt practices or other irregularities in the election. Though it is customary and necessary for the petitioner to detail in the petition the relief claimed by him, yet this is not an important part of the petition, and the appropriate relief follows the facts that are ultimately found to have been proved, by the Tribunal."

In the present case, however, the question can be viewed from a narrower angle. In a case where the election is sought to be avoided as a whole, is the petitioner prohibited from making charges of corrupt or illegal practice, which do not fall within Section 100(1), against a candidate or any other person? The relevant provisions of Section 99, dealing with the duty of a Tribunal to give a definite finding with regard to the corrupt practices, are as follows:—

"99. Other orders to be made by the Tribunal.—

- (1) At the time of making an order under Section 98 the Tribunal shall also make an order—
  - (a) where any charge is made in the petition of any corrupt or illegal practice having been committed at the election, recording—
    - (i) A finding whether any corrupt or illegal practice has or has not been proved to have been committed by, or with the connivance of, any candidate or his agent at the election, and the nature of that corrupt or illegal practice; and
    - (ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt or illegal practice and the nature of that practice, together with any such recommendations as the Tribunal may think proper to make for the exemption of any persons from any disqualifications which they may have incurred in this connection under Sections 141, 143; and
  - (b) .....

From this, it is clear that charges can not only be levelled by the petitioner against the candidates but also against third persons. It was not suggested that the petitioner was prohibited from making charges of corrupt and illegal practice against third persons in a petition where he has sought avoidance of election as a whole, even if those charges do not fall under Sub-Section (1) but really fall under Sub-Section (2) of Section 100. If that be so, I do not see how any distinction can be drawn against making such charges against a candidate. Even if it be held that the petitioner cannot claim, and the Tribunal cannot grant, the declaration of the election of returned candidates being void, because the same is barred by time, the question still remains whether there is any bar to such charges of corrupt or illegal practices not falling under Section 100(1), being made in the petition or being enquired into by the Tribunal for the purpose of giving a finding under Section 99, as to whether the candidate or any third person has been guilty of corrupt or illegal practice. No doubt, a petition cannot be filed merely for a finding being given that a particular person has committed a corrupt practice, but once a petition is before a Tribunal, which is within time, it becomes the duty of the Tribunal to enquire into all charges of corrupt and illegal practice made in the petition against the candidate or third persons and the question of limitation, or the relief claimed does not really arise, *qua* this duty under Section 99 of the Act.

For these reasons, therefore, I feel that irrespective of the question whether any relief could be given to the petitioner under Sub-Section (2) of Section 100 for declaring the election of a returned candidate void or not, the charges made in the petition, which are the subject matter of this issue, can, and, in my opinion must be gone into by the Tribunal.

The next question, however, will be whether the employment of a Lambardar as a polling agent amounts to a corrupt practice within the meaning of Sub-Section (8) of Section 123. It is not every assistance by a Lambardar which amounts to a corrupt practice. The assistance must be "for the furtherance of the prospects of the candidate's election." Duties of a polling agent, as detailed in the rules, are of a general nature, and he has to see that the election is conducted in accordance with the rules. While discharging these duties inside the polling booth, sitting with the presiding officer, it is not possible for him to influence, in any way, the voters coming in the booth to cast their votes. As a matter of fact, unless the polling agent advertises this fact before he comes to the polling booth, it is not possible for any voter to find out, on whose behalf, he is sitting at the booth. No doubt, he puts his signatures on the seals of the ballot boxes and sees that they are properly sealed etc., generally in the interest of his candidate, yet the idea of taking the signatures of the polling agents of the various candidates on all the ballot boxes is to guard against tampering. Similarly, he checks any person personating for anybody else. These acts cannot be said to be "in the furtherance of the prospects of his candidate's election" but, in fact, are in furtherance of a free and fair election and are thus in the interest of all the candidates and the election as a whole. Unless, therefore, it is proved by evidence that the Lambardar, who acted as a polling agent, advertised this fact outside the polling booth or elsewhere before the polling and thus tried to influence the voters in favour of his candidate, it is not possible to say that, by his merely acting as the polling agent of a particular candidate inside the polling booth, he, in any way, "assists" the particular candidate "in furtherance of the prospects of that candidate's election." In the present case, there is no allegation, must less any evidence, of any such action, by any of the polling agents.

I find that I am supported in the view that I have taken, by the decision of Jabbalpur Tribunal (Shri Narayan Dass V. Shri Manohar Rao etc. Gazette of India Extraordinary dated 26th February 1953, page 542.) The evidence with regard to other assistance by a "patel" was disbelieved. It was admitted that he acted as a polling agent and it was observed at page 532.—

"But in our opinion a polling agent is a person more to assist the work of polling than to work for the candidate in the polling station."

A similar view was taken by the majority in the Himachal Pradesh Tribunal in the election petition against Shri Padam Dev. In Pepsu case (Shri Ghazi Ram V. Ch. Ram Singh, Gazette of India dated 21st February 1953, page 477); the Tribunal was more concerned with the denial by the respondent of the factum of employment of the person concerned and his respondent's conduct during the trial of the petition, rather than with the legal question whether a person could be said to be assisting the prospects, by merely acting as a polling agent. It was taken for granted that acting as polling agent did amount to such an assistance.

For the reason given above, therefore, I hold that though the Tribunal can go into the allegations forming the subject matter of the issue, yet it has not been proved that any corrupt practice has been committed by respondent No. 1.

In view of the above, I respectfully, concur, though for different reasons in the order on this issue as well as in the final order of rejection of the petition proposed by my learned colleague, Mr. Khanna.

The 24th June 1953

(Sd) HARBANS SINGH, Chairman,  
Election Tribunal, Ludhiana.

**S.R.O. 1388.**—Whereas the election of Shri Harnam Singh Sethi, as a member of the Legislative Assembly of the State of Punjab, from the Ferozepur constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Mast Ram, son of Shri L. Balsakhi Ram, M.A., LL.B., Advocate, Ferozepur City;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

#### BEFORE THE ELECTION TRIBUNAL, LUDHIANA

Harbans Singh, Barrister-at-Law, *Chairman.*

Hans Raj Khanna, B.A., LL.B., *Judicial-Member.*

Parma Nand Sachdeva, B.A., LL.B., *Advocate-Member.*

#### ELECTION PETITION No. 123 of 1952

Shri Mast Ram (S/O L. Balsakhi Ram), M.A., LL.B., Advocate Ferozepur City., a voter in the Ferozepore Constituency Registered at No. 276 in the Electoral Roll for Ferozepore City part thereof and a validly nominated candidate for election in the Ferozepore Constituency of the Punjab Legislative Assembly at the General Election held in 1951-52—*Petitioner.*

#### *Versus*

Shri Harnam Singh Sethi (S/O L. Hira Nand Sethi), Sethi Ice Factory, Ferozepore Cantt., a candidate declared duly elected to the Punjab Legislative Assembly from the Ferozepore Constituency (Respondent No. 1)

Bawa Pritam Singh (S/O Bawa Tara Singh), Nai Abadi, Ferozepore City. (Respondent No. 2)

Shri Dina Nath Mehra (S/O L. Sant Ram), 143, Saddar Road, Ferozepore Cantt. (Respondent No. 3)

Shri Benasri Dass (S/O L. Behari Lal), House No. M B 89, Basti Tankanwali, Ferozepore. (Respondent No. 4)

Shri Madan Lal (S/O L. Jiwan Lal Chugg), Mohalla Ghumaran, Ferozepore City. (Respondent No. 5)

Shri Chander Sain (S/O Ch Phool Chand), Purani Khalasi Line, Ferozepore Cantt. (Respondent No. 6)

Malik Balwant Singh (S/O S. Jai Singh), Mohalla Sodhian, Ferozepore City. (Respondent No. 7)

Shri Hari Chand (S/O L. Hazari Mal), Purana Bazar, Ferozepore City. (Respondent No. 8)

S. Beant Singh (S/O S. Jiwan Singh), House No. 73/74, Purani Khalasi Line, Ferozepore Cantt. (Respondent No. 9)

S. Karam Singh Uppal (S/O S. Sant Singh), President Notified Area Committee, Basti Tankanwali, Ferozepore (Respondent No. 10)

Shri Ramji Dass (S/O L. Devi Dial Gulati), Chungi Road, House No. 248, Ferozepore City (Respondent No. 11)

Shri Kundan Lal (S/O L. Arjan Dass Bhandari), Amritsari Gate, Ferozepore City (Respondent No. 12)

Shri Balwant Rai Ahluwalia, Advocate (S/O L. Choochar Mal), Kucha Des Raj, Purana Dak Bungalow, Ludhiana. (Respondent No. 13)

Shri Ram Labhaya (S/O L. Sant Ram Chanana), House No. 32½, G. T. Road, Street No. 8, Ferozepore Cantt. (Respondent No. 14)

Shri Sitendar Nath (S/O L. Gauri Shankar), Ward No. 4, Abohar, District Ferozepore. (Respondent No. 15)

Shri Jwala Ram Sikri (S/O L. Kishan Chand), Mohalla Sodhian, Ferozepore City. (Respondent No. 16)

Shri Amin Chand (S/O L. Ramji Lal), C/O Messrs. Sita Ram Rameshwar Dass, Ferozepore Cantt. (Respondent No. 17)

Shri Mast Ram, petitioner, in person.

M/S Inder Dev Dua, Daulat Ram Kalla, Kishen Lal, Mohan Lal Sareen, Manmohan Singh, Advocates and Shri Chander Mohan, Pleader, for Shri Harnam Singh Sethi. (Respondent No. 1)

### ORDER

(PER HANS RAJ KHANNA, *Judicial-Member*)

Shri Harnam Singh Sethi, respondent No. 1, was elected to the Punjab Legislative Assembly from Ferozepore Constituency during the last general election. Shri Mast Ram, petitioner, who was one of the candidates in that election, has filed the present election petition seeking a declaration that the election of Shri Harnam Singh Sethi be declared to be void.

The respondent, in his written statement, raised certain preliminary objections. It was stated that the petition was not accompanied by a List, setting forth full particulars of the corrupt and illegal practices and that the particulars, given in the List, attached along with the petition, were not in accordance with the provisions of Section 83(2) of the Representation of the People Act, 1951. It was also stated that the reference to persons, employed by the respondent, as confirmed drunkards and heavy smokers, was unnecessary, scandalous and prejudicial to the trial of the petition. It was prayed that those words should be struck off. The Tribunal framed the following preliminary issues:

1. Is the petition liable to dismissal for non-compliance with the provisions of law as alleged in paragraphs 1 and 2 of the preliminary objections raised in the written-statement of respondent No. 1?
2. If Issue No. 1 is found against the respondent, are all, or anyone or more, or any portions of sub-paragraphs of paragraphs VI, VII and VIII of the petition liable to be struck off for the absence, in the list of the full particulars of the allegations made therein?
3. If Issue No. 2 is found against the respondent, should the petitioner be called upon or allowed to furnish further and better particulars in regard to any matter referred to in any of the sub-paragraphs of paragraphs VI, VII and VIII of the petition and if so, in what respects and on what terms?
4. Are the words "confirmed drunkards and heavy smoker" in paragraph XI of the List relating to paragraph VIII 3 of the petition unnecessary, scandalous and prejudicial to the trial of the petition and if so, are the same liable to be struck off?

As per order dated the 25th of October, 1952, (Annexure 'A') Issue No. 1 was decided against the petitioner. On Issues Nos. 2 and 3 the finding of the Tribunal was that certain allegations made in the petition should be deemed to be struck off on the ground of being vague and indefinite. In respect of some other allegations the petitioner was called upon to furnish further and better particulars. Issue No. 4 was held not to arise.

According to the petition, as it emerged after compliance with the order of the Tribunal dated the 25th of October, 1952, it was alleged that the election of Shri Harnam Singh Sethi, respondent No. 1, hereinafter described as respondent, was procured and induced by the following corrupt and illegal practices:

- (1) That the respondent issued certain circulars, placards and posters which did not bear on their face, the names and address of the printers and publishers,

(2) That the respondent, by getting printed and published poster entitled "*Congress Par War Karna Mahan Pap Hai*", attempted to induce and in fact induced the electors to believe that if they did not vote for respondent, they would be rendered objects of divine displeasure and spiritual censure.

(3) That respondent himself his agents and paid employees, made systematic appeals to Hindus to vote in favour of respondent No. 1 on the ground of religion,

(4) That the respondent published false statements of facts regarding the personal character and conduct of the petitioner believing the same to be false which prejudiced the prospects of petitioner's election,

(5) That the respondent was guilty of offering, promising and paying illegal gratification in the form of money to a large number of electors with the object of inducing them to vote in his favour.

It was also alleged that the Return of election expenses, lodged by respondent No. 1, with the Returning Officer, was false in material particulars inasmuch as major items of expenditure had been omitted or not fully stated.

The respondent in his written statement denied the allegations against him. It was stated that the respondent was not guilty of any corrupt or illegal practice.

The following Issues were framed by the Tribunal on merits:

1. Was the poster, given at serial No. 12 in paragraph I of the List marked Ex. P.1, headed "*Halqa Ferozepore*" (Urdu, Hindi, Gurmukhi), issued by respondent No. 1? If so, did this poster comply with the provisions of Section 125(3) of the Representation of the People Act, 1951? If not, how has it affected the election?
2. Did the posters and circulars, detailed at serial Nos. 1 to 9 and 11 of paragraph I of the List, comply with the provisions of Section 125(3) of the Representation of the People Act 1951? If not how has it affected the election?
3. Did respondent No. 1, by publishing and printing poster entitled "*Congress Par War Karna Mahan Pap Hai*", exercise undue influence as is defined in Section 123(2)(a)(ii) of the Representation of the People Act, 1951?
4. Did respondent No. 1 or the persons, mentioned in paragraph III of the List, systematically appeal to the voters, on the basis of religion with a view to further the prospects of the election of respondent No. 1, at the meetings held in "*Dharamsala Lala Nanak Chand Jain*" between 25th and 27th December, 1951, and also by issuing posters as detailed in sub-para. (b) of paragraph III of the List? If so, what is its effect?
5. Did respondent No. 1, through persons mentioned in paragraph IV of the List, proclaim or publish statements of facts as detailed in paragraph IV of the List, and were the same false or not believed to be true by respondent No. 1 and related to the personal character and conduct of the petitioner, and were reasonably calculated to prejudice the prospects of the petitioner's election?
6. Did the persons, mentioned in paragraph VI of the List, offer any reward to the voters for voting in favour of respondent No. 1 on the dates and the places mentioned therein? If so, what is its effect?
7. Were the expenses, detailed in paragraphs IX to XIII of the List, incurred by or on behalf of respondent No. 1 in connection with his election? If so, is the Return of election expenses, filed by him, false in material respects and what is its effect?

*Issue No 1.*—The petitioner, in the List of particulars stated that the respondent got published a poster entitled "*Halqa Ferozepore*" which was printed in three scripts "*Urdu, Hindi and Gurmukhi*". It was alleged by the petitioner that the name of the press, printer or publisher was not given on that poster. The respondent, in his written statement, denied that the aforesaid poster "*Halqa Ferozepore*" was issued by him or by his authority. The petitioner issued two notices to the respondent to admit facts. In one of the notices, 23 questions were contained while in the second notice 249 questions were stated. The questions 4 to 9, in the notice, containing 23 questions and their answers thereto, show that a poster entitled "*Halqa Ferozepore*" was issued by the respondent, but it was contended by the respondent that that poster did bear on its face the name of the press and other particulars required by law. The statement of the counsel for the respondent was recorded on the 14th of November, 1952. In that statement the counsel admitted that the respondent did get poster, headed "*Halqa Ferozepore*" printed from

Graduate Printing Press Ferozepore Cantonment. The counsel, however, added that poster marked Ex. P.1 was not that poster which his client had got printed, and that the difference between poster Ex. P.1 and the poster that had been got printed by the respondent, was that the latter bore the name of the printer and publisher of the case, while the former had not do so.

It is thus admitted by the respondent that poster entitled "*Halqa Ferozepore*" was issued by him. The difference between the parties is whether any of those posters did not bear the name of the Press. On that point the petitioner has relied upon the statement of P.W. 2 Pandit Narsingh Dass. Pandit Narsingh Dass has stated that some of the posters entitled "*Halqa Ferozepore*", did bear, on the face of them, the name of the Press. Pandit Narsingh Dass could not explain as to how the name of the Press was not there on posters marked "P.1", on this file, and Ex. P.D. on the file of a criminal case. The witness stated that he printed some posters and produced for the respondent during the criminal case. The witness was asked if he had produced some posters in the criminal case. The witness stated that he did not remember that fact but might have produced them, as stated in his statement in that court. The witness was asked if he stated in the criminal court that he did not have in his possession manuscript or sample copies of the poster Ex. P.D. which was produced in that case and which was entitled "*Halqa Ferozepore*." The witness replied as under:

"I do not remember but apparently I did not get hold of the sample copy, this and, therefore, did not produce it but I did prove Ex. P.D. in the Criminal case and also stated that I got that poster printed for Shri Harnam Singh Sethi from Public Steam Press, Ferozepore, and that on that poster Ex. P.D. there was no name of the Printer or publisher nor of the Press. I have, however, got in my file the sample copy of the advertisement, above mentioned, which I hereby produce."

To this was added the note of the Court which runs as under:

"The petitioner states that this should not be allowed to be produced but we allow it to be brought on the record for whatever it is worth."

The poster Ex. P.W. 2/A, produced by the witness, bore the name of the press. The witness was asked as to how the name of the press was not given on poster Ex. P.D. on the file of the Criminal Court and poster marked "P.1" produced by the petitioner on this file while the name of the press was given on poster Ex. P.W.2/A. The witness stated that he was not in a position to say as to why the name of the Press was not given on Exs. P.D. and P.1. The witness added that the poster 'P.1' looked the same as Ex. P.W. 2/A. The witness further stated that it was, however, possible that there were 16 copies of the advertisement on one sheet written by the Katib and that, therefore, there was a difference between different portions of that sheet after they had been cut. There were three different print orders and, therefore, Katib prepared the original three times. According to the witness, Ex. P.W. 2/A and "P.1" might be out of three different print orders.

A perusal of the evidence of P.W. 2 Pandit Narsingh Dass shows that the witness was reluctant to admit and did not in fact state before the Tribunal that the poster entitled "*Halqa Ferozepore*" was issued without the name of the Press on the same. It was, however, sought to establish that fact by asking the witness about his previous statement. The aforesaid previous statement of the witness was recorded at a time when there could be no cross-examination of the witness by the respondent. The witness admitted that the previous statement was recorded at a preliminary stage in the criminal case before the accused had been summoned. In my opinion, it cannot be held that the poster "*Halqa Ferozepore*" was printed and issued by the respondent before the Tribunal. The witness Pandit Narsingh Dass in the previous case, when the same fact is not actually deposed to by the witness before the Tribunal. It may be, as speculated by P.W. 2 Pandit Narsingh Dass, that Exs. P.D., P.W. 2/A and "P.1" were out of three different print orders and that on some the name of the Press was given and on the others it was not given. The statement of P.W. 2 Pandit Narsingh Dass on

Exs. P. 1 and P.D. as the witness himself is not definite. It may be that the name of the Press was omitted while cutting the sheet of paper containing 16 different portions. To take an extreme case, it may be possible that from poster Ex. P.D. on the criminal file and poster "P.1" on this file, the portion, containing the name of the Press, has been torn off. The petitioner in the course of his statement in the witness box did not state that the poster entitled "*Halqa Ferozepore*" was issued without the name of the Press. The respondent, however, stated on oath

that the poster did bear the name of the Press. The standard of proof, to substantiate allegations of corrupt and illegal practices, is that of a criminal case. It cannot, in my opinion, be said beyond all reasonable doubt, that the respondent issued poster "*Halqa Ferozepore*" without the name of the Press.

It is, however, conceded by the learned counsel for the respondent that the name of Printer and Publisher of the poster was not separately shown on the poster "*Halqa Ferozepore*". The argument of the learned counsel, however, is that the name of the Press covers both the name of the Printer as well as that of the Publisher. This point would be discussed in detail while dealing with Issue No. 2.

I may also state that on page 366 of Nanak Chand's Law of Elections and Election Petitions, it is stated while relying on the observation of Saran South case as under:

"Where the first issue of a pamphlet bore the name of the press, but the subsequent two issues, in almost identical words, did not bear any name and there was nothing objectionable in the pamphlet, it was held that the omission was accidental."

The above observations show that even if the name of the Press had been omitted on one of the pamphlets though it had been contained on other similar pamphlets, the omission should be held to be simply accidental.

It has also not been shown that the result of the election was affected by the poster entitled "*Halqa Ferozepore*". It may be stated in this connection that the respondent No. 1 secured 12,660 votes. Shri Pritam Singh, respondent, secured 3,589 votes while all other candidates including the petitioner lost their deposits.

**Issue No. 2.**—The allegation of the petitioner is that the posters, mentioned in the Issue, did not give the name of the Printer and Publisher thereof, and as such contravened the provisions of Section 123(3) of the Representation of the People Act. It is not denied by the respondent that the posters, mentioned in the Issue, were issued by the respondent. It is also not disputed that some of these posters did not separately bear the name and address of the publisher and printer. The contention, however, of the respondent is that the above posters contained the name of the Press and that the name of the Press, by comity and custom of the printing trade, should be taken as the trade name of the Printer and Publisher. The petitioner, however, has argued that the mentioning of the name of the Press was not enough compliance with law and that the respondent should have given separately the name of the Printer and Publisher. The petitioner has in this connection relied upon Tipperah case cited on page 302 of Sen and Poddar wherein it has been laid down as:

"Unless an electioneering pamphlet shows clearly on its face that the printer and publisher are the same, the name and address must be separately given."

It is true that the observations made in this case support the contention of the petitioner. I, however, find that in Saran South case 2 H.I.E.P. 250 at page 252 it has been stated as under:

"The name of the press may be taken as the trade name of the printer; and by "the comity and custom of the printing trade" the printer of a pamphlet is assumed to be the publisher also."

The above observations are reproduced on page 367 of Nanak Chand's Law of Elections and Election Petitions 1951 1st Edition. The Tipperah case, mentioned above, did not follow Saran South Case. In another case decided by the Election Tribunal Tiruchirappalli, the above observations in Saran South case were followed. This case is reported on page 572 of 1953 *Gazette of India*. The relevant observations are made on page 580 as under:

"**Issue No. 3.**—The facts relating to this Issue are beyond dispute and are contained in paragraph 7 of this order. The 1st respondent admits that he gave the notices for printing. The printer could have put the name of the 1st respondent as the publisher. When he failed to do so, the printer himself has to be presumed to be the publisher also (page 367, Law of Elections and Election Petitions in India by Pandit Nanak Chand, 1951 Edition). So, we find that there was no illegal practice. We also find that the result of the election has not been materially affected by the issue of Ex. A-17."

After giving a careful consideration to the matter I feel that the principle laid down in Saran South case and followed by Tiruchirappalli Tribunal should also be followed in the present case. Section 125(3) of the Representation of the People Act has been enacted to avoid the printing of objectionable matter under the cover of anonymity. Sometimes unscrupulous people resort to mud-flinging and maligning their opponents by publishing objectionable matter. At the same time those people do not print their names on the objectionable posters and pamphlets and thus try to avoid the consequences of their nefarious acts. It was to ward off this mischief that the Legislature enacted Section 125(3). In Tipperah case relied upon by the petitioner, the posters, which did not bear the name of the Printer and Publisher, were objectionable on the face of them as is clear from the observations made in that case. In the present case, however, it has not been shown by the petitioner that any of the posters, mentioned in the Issue, contained any such objectionable matter on account of which the respondent wanted to conceal the identity of the Printer and Publisher.

I, therefore, hold that the posters, mentioned in the Issue, substantially complied with the provisions of Section 125(3) of the Act.

It has not been shown that the result of the election has been affected by the posters. Issue No. 2 is, therefore, decided against the petitioner.

Issue No. 3.—It is admitted by the respondent that poster, entitled "*Congre. Par War Karna Mahan Pap Hai*" under the signatures of Dr. Satya Pal, was printed by the respondent. The argument of the petitioner is that the respondent by getting printed that poster, attempted to induce and in fact induced the electors to believe, that if they did not vote in favour of respondent No. 1, who was a Congress Candidate, the electors would be rendered objects of divine displeasure and spiritual censure. The petitioner has not pointed out to any particular passage in the body of the poster which, according to the petitioner, brings the poster within the mischief of Section 123(2)(a). The petitioner, however, argues that the word "*Mahan Pap*" in the title of the poster implies that the electors by not voting for the respondent would be rendered objects of divine displeasure and spiritual censure. The petitioner has also stressed the fact that Dr. Satya Pal is an eminent public leader and his words are bound to have a great effect on the electorate. I may, however, state that though the word "*Pap*" had its origin in religious books and is equivalent to the word "*sin*", in ordinary nomenclature it has become a synonym for something ethically undesirable. In construing the meaning to be placed on the word "*Mahan Pap*", we must not be oblivious of the fact as to who is the author of the poster. It is not the case of the petitioner that Dr. Satya Pal is a spiritual leader. Indeed the petitioner made a statement before the Tribunal that Dr. Satya Pal was not a spiritual leader. It has been laid down in Doabia's Election Cases, Volume II, p. 310 Southern Towns (Mohammadan) Constituency at page 311 as under:

"Where it was alleged that in a pamphlet issued by the Secretary of the Local Muslim League, he quoted certain *fatwa* alleged to have been issued by a Muslim Pir, but there was no proof that the said Pir ever gave any such *fatwa*:

Held, that this did not constitute spiritual undue influence as the Secretary of the League was not a spiritual head."

On page 46 of Doabia's Election Cases, Volume I North Gaya (General) Rural Constituency, it has been laid down as under:

"It is only in the case of heads of religious orders, Gurus and Pirs who have an extraordinary influence over their disciples that their interference in voting amounts to undue influence."

In Doabia's Indian Election Cases, Volume I, page 267 it has been laid down in Hoshiarpur West (Mohammadan) Constituency as under.

"Where a poster containing the charge that the petitioner sacrificed the Shahid Gunj Mosque in order to save himself and his party was published and the writer further reminded the petitioner in the poster that God was the protector of His own House and that the Majlis-i-Ahrar, to which party the petitioner belonged had incurred the wrath of Almighty and unless they repented, their own houses would be unsafe:—

It was held that this did not amount to undue influence."

I would, therefore, hold that no undue influence, as defined in Section 123(2)(a) (ii) of the Representation of the People Act, was committed by the respondent by publishing and printing poster entitled "*Congress Par War Karna Mahan Papa Hai*".

Issue No. 3 is, therefore, decided against the petitioner.

Issue No. 4.—The contention of the petitioner is that the respondent appealed to the voters on the basis of religion by holding meetings in Dharamsala Nanak Chand Jain and also by issuing poster "*Arze Hal*".

The petitioner has led evidence to show that a meeting was held in the Dharamsala during the last week of December, 1951. The leading Hindus were present in that meeting. It was also discussed there that as all the Sikh candidates had withdrawn in favour of one candidate, all the Hindus should do likewise by withdrawing in favour of one candidate. It is, however, admitted that Shri Harnam Singh Sethi was not present in the meeting. It is also admitted by Shri Pran Raj P.W. 5 who deposed with regard to that meeting that there was no talk in that meeting that Hindus should vote in favour of Hindu candidates and Sikhs should vote in favour of Sikh candidates. Shri Harnam Singh Sethi, in his statement, in the witness box, has stated that no Hindu-Sikh question was raised in the election.

The petitioner also relied on poster "*Arze Hal*" that was issued by Shri Kirpa Ram, Secretary of the Congress Committee on behalf of the respondent. The para., objected to by the petitioner, is to the effect that Shri Harnam Singh Sethi was pitted against Shri Pritam Singh who was a nominee of a communal party. It was also stated therein that one Jai Chand was responsible for the establishment of Muslim Rule in India and that the wrong exercise of the vote by the electors might result in the establishment of Khallstan. A perusal, however, of the aforesaid poster would show that the emphasis in that poster was that voters should align themselves not with communal parties but with a non-communal party like the Congress. The poster, indeed, asked the electors to shun communal parties. There was no exhortation to vote on communal basis. I would, therefore, hold that there was no appeal in the poster entitled "*Arze Hal*" to the Hindu voters to vote in favour of respondent No. 1 on the ground of religion.

The respondent also led evidence of a number of witnesses including Shri Shiv Darsaan, President of the Bar Association, Ferozepore, to the effect that no Hindu-Sikh question was raised during the elections. I would, therefore, hold that petitioner has failed to prove Issue No. 4. The Issue is thus decided against the petitioner.

Issue No. 5.—The allegation of petitioner is that in the posters entitled "*Arze Hal*" and "*Lala Mast Ram, M.A.L.L.B., Ki Tis Sala Khidmat Ka Record*", false statements of fact were made regarding the personal character and conduct of the petitioner. The portions, objected to in the two posters, were marked. In portion 'A to A' it is stated that the fact that he (Shri Mast Ram) paid off his debt, was considered by him to be a part of a national service. Shri Mast Ram states that this para. is false. This para., however, contains not so much a question of fact, as an impression with regard to the attitude of Shri Mast Ram. It cannot be said that this para. contained a false statement of fact.

In para. 'B to B', it is stated, that the near relatives, brothers, sisters, nephews and mother of the petitioner (Shri Mast Ram) are present in the city and deserve to get assistance but they receive nothing from Shri Mast Ram except hatred and abuses. Shri Mast Ram has stated that he has never abused his mother or any relative of his. He added that he had no real mother and that his step mother was living with her real son and was quite happy. Shri Mast Ram further stated that he had given financial help to his mother off and on. The respondent produced R.W. 7 Shri Shriv Ram Bhasin, Advocate, who stated that in his presence Shri Mast Ram abused his mother and refused to give her any financial assistance. The respondent also produced R.W. Shri Kirpa Ram who also stated that Shri Mast Ram twice quarrelled with his mother and abused her. The witness also stated that Shri Mast Ram did not support his mother and that she had to support herself by taking private service with a number of persons named by the witness. The petitioner, in order to succeed on this Issue, has to show that the statement, made in portion "B to B", was false and the onus is on the petitioner. In my opinion the evidence on record does not show that the statements, contained in para. "B to B", were false. It is true that the Tribunal may find it difficult to hold that the statements, objected to in portion "B to B", have been proved to be true, but in

the present case the onus is not on the respondent to show that the statements are correct. It is for the petitioner to show that the statements are false or were such as were believed by the respondent to be false. The petitioner has failed to discharge this burden.

In portion "C to C", it is stated that the petitioner promised to pay Rs. 1,000 for "Gokhle Hall" on the occasion of his uncle's death but ultimately did not fulfil that promise. According to the petitioner he never promised any money as donation for "Gokhle Hall". The petitioner, however, admitted that he voluntarily gave two withdrawal forms to Mahasha Madan Jit Arya as donation for commemorating the memory of his uncle but that in spite of the repeated requests of the petitioner, those withdrawal forms were not cashed. The respondent led the evidence of Shri Kirpa Ram who stated that the petitioner had, in fact promised to pay Rs. 1,000 and that in spite of demand, the petitioner did not pay the amount. The fact remains, however, that the petitioner issued withdrawal forms to Mahasha Madan Jit Arya in the sum of Rs. 1,000 and that the same were not cashed. In my opinion the evidence on record does not prove that the above allegation is false.

In portion "D to D" it is stated that the petitioner promised to pay Rs. 100 on the occasion of the election of Ch. Matu Ram but the petitioner did not pay the same. It is also stated that no account of the money, that was collected as donation on that occasion by the petitioner, was given by the petitioner to Dr. Ramji Dass in spite of repeated demands. P.W. 22 Dr. Ramji Dass has stated that he did not know if the petitioner had raised any funds for meeting the election expenses of Shri Matu Ram. The witness added that he never demanded any account from the petitioner. R.W. 1 Shri Kundan Lal Bhandari and R.W. 2 Shri Kirpa Ram, however, stated that the petitioner promised to pay Rs. 100 for the election of Shri Matu Ram. It was also stated that the petitioner failed to render account of the money collected by him. In my opinion the statement in portion "D to D" cannot be held to be false to the knowledge of the respondent.

The other poster, referred to by the petitioner, is "*Lala Mast Ram, M.A.L.L.B., Ki Tis Sala Khidmat Ka Record*". The poster purports to describe the services rendered by the petitioner as a Member of the Municipal Committee and also as a Congress man. The poster, however, is all blank and at the conclusion it is stated that when any service would be rendered by Shri Mast Ram, the same would be entered. The poster thus in fact says that no service was rendered by Shri Mast Ram. The poster thus embodies a matter of opinion on the public record of the petitioner and can in no sense be described to contain false statement of facts. I, therefore, hold that the petitioner has failed to prove Issue No. 5. The Issue is accordingly decided against the petitioner.

**Issue No. 6.**—There is hardly any evidence in support of this Issue and no arguments were addressed to the Tribunal by the petitioner on this Issue. The Issue is decided against the petitioner.

**Issue No. 7.**—In support of this Issue, the first allegation of the petitioner is that the respondent incurred expenses for the loud-speaker that was installed at the meeting addressed by Pt. Jawahar Lal Nehru. The argument of the petitioner is that the respondent incurred practically all the expenses for the meeting that was addressed by Pt. Nehru. It is true that the evidence shows that most of the expenses for this meeting were borne by the respondent. The petitioner's contention, however, is that a cheque of Rs. 900 was paid to Chicago Telephone and Radio Company, New Delhi in connection with the loud-speakers that were installed at the meeting addressed by Pt. Nehru, and that as the respondent incurred other expenses for that meeting, the cheque must also have been issued by the respondent. There is no direct evidence on the record to show that the respondent issued a cheque of Rs. 900 in connection with a meeting addressed by Pt. Nehru. According to Shri Rup Lal, Office Secretary of the Punjab Pradesh Congress Committee, an intimation was received from Chicago Telephone and Radio Company that they had received a cheque of Rs. 3,000 which cleared the entire bill of the Chicago Telephone and Radio Company including the bill for Ferozepore. In the absence of any direct evidence it is difficult to hold that the respondent paid Rs. 900 from his pocket. The best evidence, in order to show that the cheque was issued by the respondent, would have been the cheque itself. The petitioner, on whom the onus lay, did not produce that best evidence. An adverse inference, therefore, arises against him. The petitioner has himself no direct knowledge that the cheque was issued by the respondent. The respondent, however, denied that he made any payment for the loud-speakers. I would, therefore, hold that it has not been proved that the respondent paid Rs. 900 for the loud-speakers installed in that meeting.

It is next urged by the petitioner that ropes were purchased on behalf of the respondent for the rostrum that was set up in the meeting addressed by Pt. Nehru. The petitioner led evidence of Shri Radhe Sham P.W. 9 to show that he sold ropes to Shri Kirpa Shankar P.W. 7 on 21st December 1951. The meeting, that was addressed by Pt. Nehru, was held on 22nd December 1951. Shri Kirpa Shankar is the brother of R. S. Shri Lajya Shankar P.W. 24 who made arrangements for the meeting addressed by Pt. Nehru. Shri Lajya Shankar denied that he supplied any material. He stated that he had received Rs. 200 for the supply of labour from the respondent. Shri Kirpa Shankar as P.W. 7 denied that he made any arrangement for the meeting addressed by Pt. Nehru or that he gave any information to the petitioner with regard to the purchase of some ropes from M/s Banarsi Dass Roshan Lal. P.W. Shri Radhe Sham of M/s Banarsi Dass Roshan Lal at first stated that he had sold ropes to Shri Kirpa Shankar on 21st December 1951 but later on the witness changed his position. It is true that the attitude of the above mentioned witnesses was hostile to the petitioner and though they were produced by him, the witnesses were reluctant to make any statement in favour of the petitioner. The petitioner could lead no other evidence. At the best it may be held to have been proved that on the eve of the meeting addressed by Pt. Nehru, ropes were purchased by Shri Kirpa Shankar brother of Shri Lajya Shankar, who contracted to supply labour for setting up the rostrum. There is nothing on the record to show that those ropes were handed over to Shri Lajya Shankar or the two brothers are joint in business. There is also nothing on the record to show that Shri Lajya Shankar used those ropes for the construction of rostrum or that the cost of those ropes was paid by the respondent. It is true that some suspicion does arise but suspicion cannot take the place of proof or positive evidence. The respondent Shri Harnam Singh Sethi stated that he used ropes from his ownstock. I, therefore, hold that the petitioner has failed to substantiate the allegation that ropes were purchased by the respondent or on his behalf for the meeting addressed by Pt. Nehru.

It was next contended by the petitioner that the respondent engaged a number of persons and that the respondent had failed to show the remunerations paid to those persons in the Return. The petitioner in this connection examined P.W. 11 Shri Gurbachan Singh. The witness stated that he was employed by Shri Harnam Singh Sethi on payment. The witness, however, stated that he filed a suit against Shri Harnam Singh Sethi and the suit was dismissed. P.W. 12 Shri Arjan Singh is the father of Shri Gurbachan Singh. The witness made statement similar to Shri Gurbachan Singh. P.W. 26 Shri Vishwa Nath also stated that he had been employed by the respondent on payment. P.W. 27 Shri Devki Nandan also made a similar statement. The respondent, in his statement, denied having engaged any of these persons. In my opinion the oral statements, of those witnesses, are not enough to show that they were employed by the respondent. P.W. 11 Shri Gurbachan Singh even admitted that he filed a suit against the respondent for his dues and the suit was dismissed.

The petitioner also led evidence to show that the respondent used to serve his workers with refreshments in his office. The respondent, however, led evidence to show that no refreshments were served. The evidence, with regard to the supply of refreshments, is paltry and not convincing. Apart from the statement of P.W. 11 Shri Gurbachan Singh, whose suit was dismissed, the evidence is mostly to the effect that witnesses saw some *puris* being taken to office of respondent. The evidence is rather vague. The Halwai, who is alleged to have sold the *puris* has not been produced. The respondent denies having purchased any *puris*. In my opinion the evidence on record does not substantiate these allegations beyond reasonable doubt.

It has, however, been argued by the petitioner that on 27th November 1951 Rs. 500 were paid by the respondent to the District Congress Committee. The petitioner has argued that the amount of Rs. 500 was also incurred in connection with the election and should, therefore, have been shown in the Return of the Election Expenses. The petitioner, in this connection, relied upon a case reported on page 923 of the Gazette of India. In that case the donation had been made by the Candidate to the Congress Committee before he was adopted as a candidate by that party. It was held that payment was made with a view to secure the Congress ticket and as such was an expense incurred for the election. In the present case, however, we find that Shri Harnam Singh Sethi was selected by the Congress Committee on 11th November 1951 and the payment was made long after on 27th November 1951. Shri Harnam Singh Sethi has taken up the plea that it was pure donation to the Congress. It may be that the donation was not actuated by altruistic or charitable motives. Anyway the fact remains that it has not been shown that the payment of donation was made as an election expenditure.

It was also urged by the petitioner that even if the Congress or some other person incurred expense for loud-speakers for the meeting addressed by Pt. Nehru, still those were expenses incurred for the benefit of the respondent and he should have shown them in the Return. I may, however, state that it has not been shown that the meeting, that was addressed by Pt. Nehru, was for the exclusive benefit of Shri Harnam Singh Sethi. The meeting had the object of educating the constituencies in Ferozepore District with regard to Congress cause. It is not disputed that that was the only meeting that was addressed by Pt. Nehru on the eve of the elections in Ferozepore District. A number of candidates had been set up by the Congress in Ferozepore District. The meeting having been held to propagate the Congress cause in general, the expenses incurred at that meeting cannot be attributed to Shri Harnam Singh Sethi. Reference in this connection may be made to observation on page 200 of Nanak Chand's Law of Elections and Election Petitions 1950 Edition where it has been laid down as under:

"In *Elgin*<sup>3</sup>, it was laid down that the expenses of a meeting held after the commencement of the candidature to diffuse political information at which the candidate spoke were not election expenses, because they amounted to expenses incurred in cultivating the support of the constituency and recommending the candidate to it. Similarly in *Lancaster case*<sup>4</sup> it was held that the expenses of a meeting held at a political association which the candidate attended were not election expenses even if the candidature had already begun, because political associations were entitled to hold meetings to promote their principles whether there was or not the candidate in the field; and the presence of the candidate did not make the meeting one to promote or procure his election. A similar view was expressed in *Haggerston case*<sup>5</sup>, that lecture arranged by a political association in order to educate the constituency were not necessarily election expenses even if given to advance the prospects of the particular candidate. The test in this case was held to be whether the main object of the meeting was to promote the election of the candidate and that the line must be drawn between meetings called with the direct object of advancing the election of the candidate, and meetings called for another object from attendance upon which the candidate only derived some indirect or remote advantage."

It has next been urged that the petitioner had not shown the cost of printing of the poster entitled "*Himachal Pradesh Men Congress Jit Gai*" in the Return of Election expenses. This plea was not specifically raised by the petitioner in the petition. The respondent, while in the witness box, denied having published this poster but in the written statement, filed by the respondent, no such denial was made. In my opinion the written statement of the respondent does show that he issued the poster "*Himachal Pradesh Men Congress Jit Gai*". The commission to show the expenses, incurred for this poster, seems to be merely accidental. It is not the case of the petitioner that the showing of this expense would make the total expenses of the respondent exceed the prescribed maximum or in any other way affect the Election. The Law, as given in Section 124(4) penalises the filing of a Return which is false in any material particulars. The word "false" is not equivalent to the word "incorrect". The word "false" implies that the Return is deliberately incorrect. An accidental omission in the Return cannot be described to be a false statement. It has been laid down on page 356 of Doabia's Indian Election Cases Volume II as under:

"'False' indicates that the return of election expenses must be proved to be deliberately incorrect or in other words corrupt motive must be shown. This motive may be to omit legitimate expenses from the return where a maximum scale has been fixed or the intention may be to conceal expenditure which would go to prove some other corrupt practices."

It was also held in this case that where the amount spent is much less than the maximum prescribed and a small item is not shown in the Return, no corrupt motive can be said to exist.

It was also urged by the petitioner that the respondent had not shown the expenses of *Maida*, *Levi* or *Atta* used for the preparation of *Levi* (paste) for pasting posters. Shri Harnam Singh Sethi, however, stated that he used *Atta* from his house or that his friends supplied the *Atta* for the purpose. In my opinion, the expenses, incurred in preparing the *Levi* (paste for fixing posters) must have been insignificant. Its omission from the Return would not establish that the Return, filed by the respondent, is false in material particulars.

A ground was urged that Shri Behari Lal Diwana had made trips to Delhi but the cash paid to him had not been shown in the Return. The respondent admits having paid Railway fare to Pt. Behari Lal Diwana but denies having paid any other amount. There is no proof on the file to show that any amount was paid to Pt. Behari Lal Diwana.

It is alleged that some money was paid to Shrimati Mata Ahuja. In the alternative it is stated that a promise was made to her to meet the cost of a room by the respondent. The respondent admits that Shrimati Mata Ahuja visited Ferozepore but denies that he either paid or promised any money to Shrimati Mata Ahuja. There is no proof on the record to show that any such amount was either paid or promised by the respondent.

It is alleged that Rs. 28 were paid on account of electricity bill for the meeting addressed by Pt. Nehru, and that the respondent has not shown the same in the Return. The contention of the petitioner is that the temporary connection of electricity was taken by the respondent in the name of his brother R.W. Shri Kishen Chand and that it was Shri Kishen Chand who paid Rs. 28 on account of the electricity bill. The respondent, however, produced his brother Shri Kishen Chand R.W. 20 who denied having applied for a temporary connection of electricity for the meeting addressed by Pt. Nehru. The respondent also examined Shri Ratan Lal Dhlman, to whom contract for electric installation, was given by the respondent. The witness stated that he charged Rs. 50 for the electric installation and that the electric consumption was to be paid by Shri Dhlman out of Rs. 50. Shri Dhlman further explained the mention of the name of Shri Kishen Chand in the application for electric connection by stating that a man named Kishen Chand Mistril was a temporary employee of Shri Dhlman. There is no evidence to show that the respondent paid Rs. 28 for the electricity bill.

A ground was also taken that a sum of Rs. 300/8/- paid to Amrit Electric Press, was not supported by a voucher and Rs. 305/8/-, paid *vide* voucher No. 41, had not been shown in the Return. The respondent, in the written statement, stated that Rs. 305/8/- included Rs. 300/8/- on account of printing and Rs. 5 on account of the cost of rubber stamp. The total of Rs. 305/8/- has thus been explained. No arguments were addressed before us by the petitioner in support of this item.

It was also stated in the petition that the petitioner had purchased 500 issues of 'Chitan' newspaper for free distribution. P.W. 1 Shri H. R. Dhlman Editor of the 'Chitan', has denied that the respondent purchased any issue of 'Chitan' from him. There is no proof on the file in support of this item. This item was also not pressed by the petitioner at the time of arguments.

It was also stated that the respondent had engaged on hire truck No. P.N.F. 1022 for ten days and had not shown the amount of hire demanded by the truck owner in the Return. There is, however, no proof on the file that the respondent engaged this truck.

Lastly it is stated that the respondent had shown a payment of Rs. 48 made to Kumar Arts for loud-speakers which was not supported by any voucher and that voucher No. 25 for the writing of 12 cloth boards had not been shown in the Return. The respondent has, however, explained it by stating that the sum of Rs. 48 paid to Kumar Arts was by oversight entered in the Return as on account of loud-speakers and that it should have been shown as payment for 12 cloth Boards. Voucher No. 25 supports this explanation of the respondent. It was, in my opinion, a clerical mistake which did not affect the correctness of the Return.

Arguments were also addressed before us by the counsel for the respondent to the effect, that even if there was any false statement in the Return, as the Return was filed "after the election", it would entail no disqualification. This question, however, does not arise in view of my findings given above.

For the reasons given above, the petition fails. I hold that it has not been proved that the respondent was guilty of any corrupt or illegal practices. I accordingly dismiss the election petition.

Keeping in view all the circumstances of the case, in my opinion, the parties should be left to bear their own costs.

LUDHIANA;

The 24th June 1953.

(Sd.) HANS RAJ KHANNA, *Judicial-Member,*  
Election Petition Tribunal.

I agree.

The 24th June 1953.

(Sd.) P. N. SACHDEVA, *Advocate-Member.*

## ELECTION PETITION No. 123 OF 1952.

Shri Mast Ram—Petitioner

*Versus.*

Sardar Harnam Singh Sethi &amp; 16 others—Respondents.

## ORDER

In the last general elections Sardar Harnam Singh Sethi, respondent No. 1, who shall hereafter be described as respondent, was elected to the Punjab Legislative Assembly from Ferozepore Constituency. Shri Mast Ram, who was one of the candidates in that election, thereafter filed the present election petition under Section 83 of the Representation of People Act, 1951, seeking a declaration that the election of the respondent be declared to be void.

The respondent, in his written statement, raised certain Preliminary Objections. It was stated in para '1' of the Preliminary Objections that the petition was not accompanied by a list duly signed and verified setting forth full particulars of the Corrupt and Illegal practices alleged by the petitioner and including as full a statement as possible as to the names of the parties alleged to have committed such practices along with the date and place of the commission of the same. It was further pleaded that the particulars, given in the list attached along with the petition, were not in accordance with the provisions of Section 83(2) of the Representation of People Act, 1951, for the reasons given in the various clauses of para No. 3, of the Preliminary Objections of the written statement. It was also averred by the respondent that the reference to the persons employed by the respondent, as confirmed drunkards and heavy smokers, was unnecessary, scandalous and prejudicial to the trial of the petition. It was prayed that those words should be struck off under Order 6 Rule 16 of the Civil Procedure Code.

The Tribunal framed the following preliminary issues:

- (1) Is the petition liable to dismissal for non-compliance with the provisions of the Law as alleged in paragraphs 1 and 2 of the preliminary objections raised in the written statement of respondent No. 1?
- (2) If issue No. 1 is found against the respondent, are all, or anyone or more, or any portions of sub-paragraphs of paragraphs VI, VII and VIII of the petition liable to be struck off for the absence, in the list, of the full particulars of the allegations made therein?
- (3) If issue No. 2 is found against the respondent, should the petitioner be called upon or allowed to furnish further and better particulars in regard to any matter referred to in any of the sub-paragraphs of paragraphs VI, VII and VIII of the petition and if so, in what respects and on what terms?
- (4) Are the words "confirmed drunkard and heavy smoker" in paragraph XI of the list relating to paragraph VIII(3) of the petition unnecessary, scandalous and prejudicial to the trial of the petition and if so, are the same liable to be struck off?

The parties agreed that no evidence was to be led on the preliminary issues and only arguments were addressed to us.

*Issue No. 1.*—No arguments were addressed to the Tribunal on this issue. The petitioner attached with the petition a list duly signed and verified. It is true that some of the particulars given in the list are vague and some require a further and better statement as will be discussed while dealing with issues Nos. 2 and 3. The fact remains, however, that the petitioner has filed along with the petition a list as required by Section 83(2) of the Representation of the People Act, 1951, and therefore, the entire petition is not liable to dismissal.

*Issues Nos. 2 and 3.*—For convenience sake it will be better to take these two issues together. Before giving finding on the objections with regard to the various paras. it would be better to lay down the general principle that should guide us in adjudicating upon the various objections. According to Section 83 of the Representation of the People Act, 1951, an election petition should contain a concise statement of the material facts on which the petitioner relies. It has been provided in sub section '2' of that Section that the petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt and illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice. Further it has been provided in sub-section

'3' that the Tribunal may, upon such terms as it thinks, allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may be necessary for the purpose of ensuring a fair and effectual trial of the petition. A perusal of sub-section '2' thus shows that the list should contain as full a statement as possible as to the names of the parties alleged to have committed corrupt and illegal practices and the date and place of the commission of such practice. Further sub-section '3' shows that further and better particulars may be called but only with regard to those matters that have already been referred to in the list. It has been laid down in the case *Ambala North Sikh Rural Constituency*, decided on the 17th January, 1940 as under:—

"The provision requiring that the petition should be accompanied by a list of full particulars of the corrupt practices alleged in the petition is a mandatory and salutary one. The allegation of a corrupt practice is a quasi criminal charge and it is but right that the respondent ought to know at the earliest possible moment the exact charges which he is called upon to meet and the element of surprise and harassment must be obviated."

Further it has been laid down in *Calcutta North Mohammadan Urban Constituency* dated on 8th September, 1937, as under:—

"In providing that the original petition shall set out the material facts upon which the petitioner relies together with full particulars of any corrupt practices which he alleges, the intention of the framers of the "Election Petitions Rules" is obviously to ensure that the petition should be a *bona fide* petition based upon specific instances of corrupt or improper conduct on the part of the respondent, which the petitioner would be able to establish by evidence available to him at the time of the presentation of the petition, that the offence charged should be clearly identified and that the respondent should have reasonable notice of the charge that he would be called upon to meet. Particulars which are insufficient for the purpose of satisfying this test cannot be regarded as full particulars. *Akyab Case*, *Hammond Election Cases*, page 47; *Bulandshahr Case*, page 219; *Saharanpur Case*, page 623 and *Kangra Case*, page 439, referred to."

Further it has been laid down in that case as under:—

"When only vague allegations of corruption are made in the original petition, to allow specific particulars of these allegations to be furnished after the expiry of the prescribed period of limitation would in effect amount to the admission of a new petition which was time-barred, and would involve the adoption of a procedure which the law does not contemplate."

It has also been laid down in that case as under:—

"The law contemplates that the particulars, if any, given in the original petition may be amplified but vague allegations without particulars in the petition may not be developed into specific charges after the expiry of the prescribed period of limitation."

In the light of the above observations we give our findings with regard to the different paras of the petition and the list given under section 83(2) of the Representation of the People Act, 1951.

Para VI. 1.—The objection of the respondent, that the copies of the posters, mentioned in para. VI. 1, have not been furnished by the petitioner, is not correct. The posters, referred to in the para, have already been filed along with the petition. The other objection of the respondent with regard to this para. is that the date of publication of the posters has not been given. On reference to para. VI. 1 of the list we find that it has been stated by the petitioner at the posters, mentioned therein, were issued in the later half of December, 1951. In our opinion a petitioner is expected to give as full a detail as he possibly can. It was not possible for the petitioner to know the exact date of the publication of each of the posters. The petitioner has stated that these posters were issued in the later half of December, 1951, and in our opinion this was a substantial compliance with the provisions of the law. With regard to the place of publication, the petitioner has stated that these posters were issued in the Constituency in general and Ferozepore City, Ferozepore Cantonment and Basti Tankanwall in particular. In our opinion the words "in the Constituency in general" are vague and the petitioner shall be confined to leading evidence only with regard to the issue of posters within the limits of Ferozepore City, Ferozepore Cantonment

and Basti Tankanwali only. The words "in the Constituency in general" should be deemed to be struck off. The petitioner has also put down the words "etc., etc.," at the close of the para. In our opinion these words are vague and superfluous and should be deemed to be struck off.

*Para VI. 2.*—The objection with regard to this para is the same as was the objection with regard to para VI. 1. The poster, mentioned in this para, is mentioned at No. 8 in para. VI. 1. As this objection has already been dealt with while disposing of the objection to para VI. 1, it is not necessary to give a finding over again on this point.

*Para VI. 3(a).*—One of the objections of the respondent is that the place where Dharamsala L. Nanak Chand Jain is situated, has not been specified. The petitioner should specify the place where this Dharamsala is situated. The petitioner has not in this para in the beginning given the names of the persons who are alleged to have appealed but has later on stated that Mahasha Tulsi Ram, L. Ram Nath, Mahasha Mahant Ram, Dr. Sadhu Chand and L. Nirendar Nath, mentioned therein, appealed to those present on the ground that the respondent was a Hindu. The petitioner has also stated that some others also made an appeal but in our opinion the words "and some others" are vague. The petitioner shall be confined to leading evidence only with regard to the appeal made by the persons mentioned above.

*Para VI. 4.*—The objection of the respondent is that the caste and address of Mahasha Paras Ram, L. Ram Parshad son of L. Tirath Ram and Shree Umrao Panwari are not given. The petitioner should furnish the particulars of these persons.

The other objection of the respondent is that the places, where the proclamations, referred to in the para, were made, have not been specified.

The petitioner has not mentioned the place or places where the proclamation was made. In view of the fact that the allegations on the whole in this para are not vague, we permit the petitioner to state the place of the proclamation. The respondent has also raised the objection that the petitioner has not mentioned the place of the publication of the poster entitled "Lala Mast Ram, M.A., LL.B., Ki Tis Salah Khidmat Ka Record". On reference to para. VI. 1, we find that this poster was mentioned at No. 2 of the list. It has also been held by us above that the petitioner shall be confined to his allegations with regard to the issue of this poster within the limits of Ferozepore City, Ferozepore Cantonment and Basti Tankanwali only. These places have already been mentioned by the petitioner in para VI. 1. So this objection of the respondent has no force.

*Para VI. 5.*—The petitioner in this para has made allegations of hiring, procuring and supplying of conveyance to the electors. The petitioner has, however, not stated the places at which different vehicles were hired nor the places from where those vehicles were taken to the Polling Stations. The names of the voters, who were provided with conveyance, have also not been given. The fares paid are also not mentioned. In our opinion the allegations made in para. VI. 5 are vague and these should be deemed to be struck off.

*Para VI. 6.*—The allegations, in para VI. 6, referred to vote purchasing for the respondent. The objections raised are twofold. The first is that the names of the voters, who were bribed and the amounts paid to them, have not been detailed. All that the law requires is that particulars should be given as far as it is practicable. The petitioner has given the details of the persons who are alleged to have purchased votes for the respondent. The petitioner has also mentioned the places and the dates of the vote purchaser. In our opinion this was a substantial compliance with the legal requirements.

The second objection is that the addresses of the persons, who purchased votes for the respondent, have not been given and that the words "Christian Missionaries" are vague and the words "and others" in sub-para. 2(1) should be struck off. We feel that the addresses of Shree Kidar Nath Mehta, S. Manmohan Singh, Shree Pran Nath and S. Karam Singh should be furnished so as to fix their identity. The words "and others" in sub-para. 2(1) and the words "Christian Missionaries" in sub-para. 3, 4 and 5 shall be deemed to be struck off.

*Para VI. 7.*—In para VI. 7 the petitioner has referred to an interference with the free exercise of the electoral right by Bibi Vidya Wati Mehta. It is alleged that the aforesaid lady threatened refugee widows who had got sewing machines from the Government that if they did not vote in favour of the respondent, their machines would be taken back. The petitioner has not given the names of the widows who were threatened nor the date nor the place when and where they were threatened. In our opinion the particulars supplied are vague and indefinite and should be deemed to be struck off.

*Para VII.*—The petitioner has alleged in this para that the respondent made payments to different persons exceeding the prescribed limit of Rs. 7,000. No details and particulars have been mentioned in this para, and in our opinion this para should be deemed to be struck off on the ground of being vague and indefinite.

*Para VIII. 1.*—The objection of the respondent is that the place and dates of the alleged employments of the persons are not given. The objection of the petitioner with regard to these payments is that they have not been included in the Return of the election expenses. The objection is not that the payments as such constituted illegal or corrupt practice. The respondent having mentioned the names of the persons to whom the payments were made and the amounts paid to each one of them, the date of payment and the place of payment are things of minor importance so far as the allegations in this para are concerned. In our opinion there was sufficient compliance by the petitioner with the provisions of the law so far as this para was concerned.

*Para VIII. 2.*—The objection of the respondent is that the addresses of Pt. Ram Rakha, tonga driver and Pt. Bhola Nath, rickshaw driver are not given nor the names of the voters carried by them. The place where they worked and the payments made to them have also not been mentioned. The petitioner, in our opinion, should furnish the addresses of the above mentioned persons, and also give the details of the places where they worked and the payment made to them. The objection being only with regard to the falsity of the return of election expenses, we do not think it essential that the names of the voters, who were carried by them, need be given. The words "and many others" at the end of the paragraph are vague and should be deemed to be struck off.

*Para VIII. 3.*—The objection of the respondent is that the dates of the expenses mentioned in the first part of this sub-paragraph have not been given. The petitioner has stated that Rs. 30 per day for about 15 to 20 days were spent in connection with purchase of the sweets etc., from the shop of M/s Ghasia Mal Ram Lal, and Rs. 5 per day for about 20 days from the shop of M/s Shankar Dass and Sons, and meals worth Rs. 20 to Rs. 30 per day from Khalsa Punjab Hotel. He has not given the dates on which these expenses were incurred. We feel that these details should be supplied and we order accordingly.

The allegations, contained in 2nd sub-paragraph of para. VIII. 3 are vague. The dates, on which the expense was incurred on liquor and the place where the same was incurred, have not been given. This being the case, this sub-paragraph should be deemed to be struck off.

*Para VIII. 5(1).*—The petitioner has not given the name of any lady worker said to have been employed by the respondent. This allegation is vague and should be deemed to have been struck off.

*Para VIII. 5(3).*—The petitioner has not given the address of Shrimati Lajja Wati nor the place from where she travelled to Ferozenore and the dates of her trips and the amount spent in connection therewith. The petitioner is directed to furnish these particulars.

*Para VIII. 5(5).*—The petitioner should furnish the address of the paper "Chittan".

*Para VIII. 5(6).*—It was objected that the petitioner had not given the address of Shri Atma Shanker Bhargava. The sum claimed has also not been mentioned therein. The date of the engagement of the truck has also not been given. The petitioner should give these particulars which seem to be necessary.

*Issue No. 4.*—In view of our finding on issues Nos. 2 and 3 wherein we have stated that the paras containing the words "confirmed drunkards and heavy smokers" are vague and have been ordered to be struck off, this issue does not arise.

The petitioner should amend the petition and the list by furnishing particulars in the light of the above order on or before 31st instant. A copy of these particulars should be supplied by the petitioner to the counsel for the respondent on the same date. Reply by the respondent will be filed in the office on or before 10th of November 1952, and a copy supplied to the petitioner. The issues on merits will be settled on 14th November, 1952. We assess costs of this objection as Rs. 32 to be paid by the petitioner to the contesting respondent.

Orders announced.

Shri Mast Ram, petitioner, in person with Shri Prabh Dayal, Advocate.

R. B. Pt. Daulat Ram Kalra and Shri Mohan Lal Sareen Advocate for respondent No. 1.

The 25th October, 1953

(Sd) HARBANS SINGH, *Chairman*.

(Sd.) H. R. KHANNA, *Member*.

(Sd) P. N. SACHDEV, *Member*.

Mast Ram *versus* Harnam Singh

(By S HARBANS SINGH, *Chairman*).

I find myself in respectful agreement, with the findings given by my learned colleague, Mr. Khanna, on all the issues, except issue No. 2. Admittedly, posters mentioned at Serial Nos. 1 to 10 in paragraph 1 of the list of particulars filed with the petition were issued by respondent No. 1. Out of these, those mentioned at serial Nos 4 to 7 and at No. 10 do not bear, on the face of them, the name or address of the publisher. The name of the printing press is given, and it may be taken that the name of the printing press is also the trade name and address of the printer and, consequently, it may be taken that the name and the address of the printer is given in all these posters. The view taken by my learned colleague, however, is that where no publisher is mentioned in a poster, the printing press itself should be "assumed to be the publisher also." This is based on the observations made in Saran South's case, Hammond's Indian Election Petitions Volume II, page 250 at page 252 as follows:—

"The name of the press may be taken as the trade name of the printer; and we are prepared to accept the view that by the comity and custom of the printing trade the printer of a pamphlet is assumed to be the publisher also."

Immediately after this observation, however, the learned Commissioners went on to say as follows:—

"In any case, we cannot find that the omission of the name of the printer or publisher on any pamphlet has affected the result of the election. . . and, therefore, the election cannot be declared void on this account."

It is obvious, therefore, that the learned Commissioners were not considering the question whether the omission of the name of the publisher would or would not amount to an illegal practice. Apparently, the rules, then in force, did not make such an omission as a corrupt or illegal practice.

In the case decided by Election Tribunal Tiruchirappalli referred to by Mr. Khanna, this matter is dealt with in issue No 3 at page 580 of the Gazette and the observation in Saran South's case given above are followed and no further reasonings are given.

Even if the observations made in Saran South are accepted, that would only mean that in the absence of evidence to the contrary a presumption may be raised that a printer of a poster was also its publisher. Admittedly, this presumption is not a presumption of law and consequently, where it is admitted or is proved by evidence that a poster was, in fact, published by somebody other than the printer, this presumption cannot possibly prevail. To this effect are the observations in Tipperah North case reported in Sen and Poddar at page 803. The relevant observations at pages 816 and 817 are as follows:—

"Certainly as regards the majority of the pamphlets with which we are now concerned, the assumption made by the Commissioners in the South Saran case would be inappropriate and against the evidence. In almost every case the name of the press is mentioned, but it has not even been contended that these leaflets were published by the press whose name they bear. In fact, evidence is forthcoming in several cases with regard to the names of the persons who published these documents, and under whose authority they were printed. Printing is merely a mechanical process for reproducing manuscript which is sent to the press. Printed matter, however, can ordinarily only be put into circulation under the authority of a person who is prepared to assume responsibility for its publication and, especially in the case of electioneering pamphlets, it is essential that full particulars should be given to enable that person to be traced. It is probably on this account that the printer and publisher are separately mentioned in Paragraph 3 of Part III of the Corrupt Practices Schedule. We

think, therefore, that unless an electoneering pamphlet shows clearly on its face that the printer and the publisher are the same, the name and the address of the publisher must be separately mentioned."

The observations reproduced above aptly apply to the facts of the present case. As stated above, the issuing of all the posters is admitted, and respondent No. 1, as his own witness, admitted the publication of the posters as follows:—

"It is correct that I got most of the posters and pamphlets published after the filing of my nomination paper."

In fact, there is no suggestion whatever, either in the written statement or otherwise, that the respective printers of the posters were the publishers thereof. In view of this, therefore, the assumption that the printer would be the publisher cannot possibly arise.

The omission to mention the name of the publisher amounts to an illegality under Sub-section (3) of Section 125, which runs as follows:—

"The issuing of any circular, placard or poster having a reference to the election which does not bear on its face the name and address of the printer and publisher thereof."

The wording of this Section do not allow taking into consideration of the motive with which the omission is made, and the objectionable or innocent nature of the contents of the poster in question, cannot be taken into consideration for giving a finding whether an illegal practice has been committed by an omission to mention in the poster the name of its publisher. It is well established that a "corrupt motive" is material only in case of a "corrupt practice" but not in case of an illegal practice. At page 218 of Nanak Chand's Law of Elections and Election Petitions, first edition, the law is stated as under:—

"The main distinction between corrupt and illegal practices is that whereas corrupt motive is material in case of corrupt practices, no such motive is material in case of illegal practices."

It may sound a little strange, that a candidate may be declared as disqualified for apparently an innocent act, but it is not for the Tribunal to refuse to interpret the provisions of the Act, as they are. Illustrations under ordinary criminal law are also not lacking, where the provisions of law are so worded that a person may be held guilty of a criminal charge and subjected to serious penalties though there may be no *mens rea* or even knowledge. Reference may be made in this respect to *Uttam Chand versus Crown*, reported in A.I.R. 1945 Lahore 238 (Full Bench), which was a case of Defence of India Rules, where it was observed as follows:—

"In cases covered by sections 4, 6 and 14 of Defence of India Ordinance, a dealer, whether he resides in British India or not, who does not himself commit an offence under the Ordinance, can be still punished under section 13, if an offence against the Ordinance was committed without his knowledge or consent by a servant or a co-dealer working on the business premises, and all partners of a firm, whether residing in British India or not could be held criminally responsible for the contravention of the Ordinance by a servant or by a member of the firm without their knowledge or consent, and all coparceners of a joint family firm can be held similarly liable even if some of them happen to be minors."

Mr. Inder Dev Dua, learned counsel for the respondent, argued that the Tribunal had no jurisdiction to declare a sitting member of the Assembly disqualified, because that would indirectly result in his removal from the membership of the legislature and that removal of a sitting member was a function which is vested under Article 192 of the Constitution in the Governor. Reference was also made to a decision by the Supreme Court in A.I.R. 1953 Supreme Court 210. The latter case is an authority for the point that under Article 192 a sitting member can be removed by the Governor only for a disqualification which had come into existence after the date of election. In the present case, if the sitting member is disqualified, he would be disqualified for an act done not after but prior to the date of his being chosen as a member, and consequently the Tribunal is the only authority to give such a finding, and this jurisdiction of the Tribunal, in no way, comes into conflict with the provisions of the Constitution.

In the light of the view taken by my two learned colleagues, to the effect that respondent No. 1 is not guilty of an illegal practice for not giving the name of the publisher in the posters published by him, it is not necessary to go into this question in detail. My finding on this issue however, is that respondent No. 1 has committed an illegal practice under Section 125(3) of the Act and though this

has not materially affected the result of the election, yet respondent No. 1 has rendered himself Subject to disqualification under sections 140 and 142 for a period of four years.

In view of the fact that no corrupt motive is involved in the case, I would further recommend for his exemption from this disqualification.

The 24th June, 1953

(Sd.) HARBANS SINGH, *Chairman,*  
Election Tribunal, Ludhiana.

Shri Mast Ram Vs. Shri Harnam Singh Sethi etc.

#### ORDER OF THE TRIBUNAL

Held unanimously that the result of the election was not materially affected by the irregularities alleged in the petition and the petition is, therefore, dismissed.

Also held by majority that Shri Harnam Singh, is not guilty of corrupt or illegal practice.

Parties directed to bear their own costs.

The 24th June, 1953.

(Sd.) HARBANS SINGH, *Chairman.*

(Sd.) P. N. SACHDEVA, *Member.*

(Sd.) HANS RAJ KHANNA, *Member.*

*Announced.*

PRESENT: Shri Mast Ram, petitioner.

Shri Mohan Lall Sarcen, Advocate, for Respondent No. 1.

(Sd.) HARBANS SINGH, 24-6-53.

(Sd.) P. N. SACHDEVA, 24-6-53.

(Sd.) HANS RAJ KHANNA, 24-6-53

[No. 19/123/52-Elcc III/10787.]

P. R. KRISHNAMURTHY, Asstt. Secy.